

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA SEP 30 1976

GEORGE ELDON VAUGHN,

Plaintiff,

vs.

JOHN Q. ADAMS, et al.,

Defendants.

) Jack C. Silver, Clerk
) U. S. DISTRICT COURT
)
) 76-C-16-B
)
)
) U. S. DISTRICT COURT
) Jack C. Silver, Clerk
)
)
) SEP 30 1976

MEMORANDUM AND ORDER

FILED

The Court has for consideration the Motions to Dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure filed by the defendants, John Q. Adams, Edwin M. Moore, Bob Vinzant, Sideny Wise and John Tom Elliott, and, having carefully perused the entire file, and, being fully advised in the premises, finds:

That the defendant, Dixie Marlene Vaughn, now Philpot, has filed a pro se answer wherein she denies jurisdiction and the alleged conspiracy and asked that she be discharged with her costs.

Since the defendant, Marlene Vaughn, now Philpot, has filed her pro se pleading and the Court must treat such pleading liberally, the Court will additionally treat her answer as a Motion to Dismiss.

A brief history of this litigation, prior to turning to the allegations of plaintiff's complaint will help clarify the conflict facing the Court.

The Court takes judicial notice of the case of George Eldon Vaughn vs. State of Oklahoma, et al., Number 74-C-607 (incidentally a copy of the order in that case is attached to plaintiff's complaint), filed in the United States District Court for the Northern District of Oklahoma.

The pertinent facts appear to be as follows:

Plaintiff was found guilty in two jury trials in the District Court of Mayes County, Oklahoma, wherein he was charged with shooting with intent to kill, and the sentence was fixed at 20 years confinement in Case No. CRF-69-121, and 20 years confinement in Case No.

CRF-69-120, the latter sentence to run consecutively to the former. Both cases were affirmed by the Oklahoma Court of Criminal Appeals on direct appeal, CRF-69-121, appeal No. A-15,979, reported Vaughn v. State, Okl.Cr., 489 P.2d 507 (1971); and CRF-69-120, appeal No. A-16,835, reported Vaughn v. State, Okl.Cr., 497 P.2d 769 (1972).

It is further revealed that plaintiff sought post-conviction relief and the District Court of Mayes County, Oklahoma, denied relief in case No. CRF-69-120 and modified the sentence in Case No. CRF-69-121 to a period of 10 years. The Oklahoma Court of Criminal Appeals issued a mandate for the post-conviction record and thereafter affirmed the decision of the District Court.

There were several grounds for relief asserted by the plaintiff in the criminal cases before the State Courts, and one of them was the testimony of Dixie Marlene Vaughn (the testimony complained of herein and alleged as part of the conspiracy). The Court found that the divorce of October 7, 1969, of the prosecution witness, Dixie Marlene Vaughn and the defendant, George Eldon Vaughn, was void, and, therefore, the witness should not have been allowed to testify in the trials. The District Court found that her testimony in Case No. CRF-69-120 was merely cumulative, and affirmed the judgment and sentence, but in Case No. CRF-69-121, the Court found that her testimony may have inflamed the passion and prejudice of the jury and the Court reduced the sentence in CRF-69-121 from 20 years to 10 years.

Having exhausted his state court remedies, plaintiff then turned to the Federal Courts, filed a §2254 motion bearing case number 74-C-607 in the United States District Court for the Northern District of Oklahoma, on December 30, 1974. The testimony of the witness was again raised and this Court found that her testimony was merely cumulative and "harmless beyond a reasonable doubt".

The ruling of the Court on the habeas corpus was appealed to the Tenth Circuit Court of Appeals, being appeal number 75-1562, decided on February 2, 1976, with the mandate issued on February

26, 1976.

On January 16, 1976, the present litigation was instituted pro se by the plaintiff, wherein he contends that the action arises under the Fourteenth Amendment to the Constitution of the United States, 42 U.S.C. §§1983 and 1985. In the section of the complaint entitled "Jurisdictional Statement" plaintiff makes specific allegations in regard to the conduct of each defendant and specifies that such conduct is in violation of 42 U.S.C. §1983.

Plaintiff's complaint alleges that the defendant, John Q. Adams, was the presiding District Judge in the two criminal cases in the District Court of Mayes County, Oklahoma, being case No. CRF-69-121 and CRF-69-120, wherein plaintiff was found in two felony crimes; the defendant, Edwin M. Moore, was the presiding judge in the divorce action wherein the plaintiff, Marlene Vaughn, the defendant Marlene Vaughn Philpot herein, secured a Decree of Divorce from this plaintiff in the District Court of Mayes County, Oklahoma; that the defendant, Bob Vinzant was the District Attorney for Mayes County, Oklahoma, and served in such capacity in the prosecution of the two criminal cases above cited; that the defendants Sidney Wise and John Tom Elliott were during the period involved serving as Addistant District Attorneys for Mayes County, Oklahoma.

Turning to the claim under 42 U.S.C. §1985, that section provides, in pertinent part, for safeguarding the equal protection of the laws or equal privileges and immunities under the law. *Griffin v. Breckenridge*, 403 U.S. 88 (1971).

Title 42 U.S.C. §1985 reaches conspiracy to deprive one of rights only when the objective thereof is deprivation of equality and does not cover conspiracies to deny due process. *Lewis v. Brautigam*, 227 F.2d 124 (5th Cir. 1955); *Weise v. Reisner*, 318 F.Supp. 580 (USDC ED Wis. 1970).

Furthermore, it has been held that to state a cause of action under Title 42 U.S.C. §1985 it must be alleged that there was some racial, or class-based, invidiously discriminatory animus,

thereby seeking to deprive plaintiff and/or others in his class of equal enjoyment of rights secured by law to all. *Spencer v. Commuinty Hospital of Evanston*, 393 F.Supp. 1072 (D.C.Ill. 1975); *Shaw v. Garrison*, 391 F.Supp. 1353 (D.C. La. 1975).

The Court, will, therefore, Dismiss the Cause of Action as to all defendants with reference to the 42 U.S.C. §1985 claim.

The defendant, Bob Vinzant, and the defendants, Sidney Wise and John Tom Elliott, being the county attorney of Mayes County, Oklahoma, and members of his staff, respectively also contend that plaintiff has failed to state a cause of action in regard to Title 42 U.S.C. §1983.

In regard to the contention of the defendant, Vinzant, the Supreme Court, in *Imbler v. Pachtman*, Case No. 74-5435, decided March 2, 1976, 44 LW 4251 addressed the question of whether a state prosecuting attorney within the scope of his duties in pursuing criminal prosecutions is absolutely immune from a civil suit for damages under §1983. The Court said:

"We conclude that the considerations outlined above dictate the same absolute immunity under §1983 that the prosecutor enjoys at common law. To be sure, this immunity does leave the genuinely wronged defendant without civil redress against a prosecutor whose malicious and dishonest action deprives him of his liberty. But the alternative of qualifying a prosuector's immunity would disserve the broader public interest. It would prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system."

The Court, therefore, finds that the Motion to Dismiss of Bob Vinzant should be sustained.

Defendant, Wise and Elliott, contend that they should also be afforded absolute immunity.

The Court recognizes that in certain states, such as Oklahoma, malice in instituting a criminal proceeding may be inferred or implied in actions of malicious prosecution where proof shows want of probable cause. *Moore v. York*, 371 P.2d 469 (Okla. 1962). While Oklahoma allows this inference, it is merely an inference and does not amount to an irrebuttable presumption. In the case at bar, malice is not alleged and any inference of malice due to lack of probable

cause is rebutted by the facts alleged in the Complaint.

In attempting to determine the proper elements of a §1983 action based upon malicious prosecution, which must be the end result of the conspiracy alleged in plaintiff's complaint, the Court notes the elements of malicious prosecution as set out in the Restatement of Tort §653. Said Section provides that the initiating of criminal proceedings against another who is not guilty of the offense charged is liable to him if the proceedings were initiated without probable cause and primarily because of a purpose other than that of bringing an offender to justice. In the case at bar, the factual allegations certainly do not indicate that the defendants initiated the prosecution against plaintiff primarily because of a purpose other than that of bringing an offender to justice. This element would seem to be a proper prerequisite to the bringing of a §1983 action based upon alleged malicious prosecution.

In *Stringer v. Dilger*, 313 F.2d 536 (10th Cir. 1963) the Court said at pages 540-541:

"The Civil Rights Act, of course, was not enacted to discipline local law enforcement officials (cites omitted). Nevertheless, local law enforcement officials are subject to civil liberties under §1983 in cases involving deprivations, under color of state law, of rights guaranteed by the Constitution and laws of the United States and particularly by the due process clause of the Fourteenth Amendment (cites omitted). There must, however, be an actual denial of due process before a cause of action arises."

The Court finds that the factual allegations in the instant case do not support a finding of malice or gross negligence on the part of the defendants Wise and Elliott.

The Court finds that the Motions to Dismiss filed by the defendants, Wise and Elliott should be sustained.

As to the Motions of the two Judges involved in this litigation, Judges Adams and Moore, they move to dismiss upon the grounds that as Judges of the courts, and the triers of the facts, in the actions complained of by the plaintiff, they are immuned from liability in actions under §1983.

The Court finds from the records before it that the Judges acted in their judicial capacity and has a common law immunity for acts committed in his judicial capacity. Bailey M. Smith v. Supreme Court of Oklahoma (CIV-71-736); Franklin v. Meredith (10th CCA, 1967) 386 F.2d 958; Pierson v. Ray, 386 U.S. 547; Ryan v. Scoggins, 245 F.2d 54 (10th Cir. 1957).

As to the remaining defendant, Marlene Vaughn, now Philpot, who filed a pro se answer, which the Court has treated as a Motion to Dismiss. In Stambler v. Dillon, 302 F.Supp. 1250 (USDC SD NY 1969) the Court held in discussing the liability of a witness in a trial:

"Nor is a witness at a trial acting under color of state law. Pritt v. Johnson, 264 F.2Supp. 167 (MDPa. 1967)."

The Court, therefore, finds that the Motions to Dismiss should be sustained and the complaint and cause of action dismissed as to all defendants.

IT IS, THEREFORE, ORDERED that the Motions to Dismiss filed by the defendants and the answer filed by the defendant, Marlene Vaughn, now Philpot, which the Court has treated as a motion to dismiss, be and the same are hereby sustained and the cause of action and complaint are hereby dismissed for failure to state a claim.

ENTERED this 30th day of September, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES D. WILSON, W. H. JONES,
D. L. CHILDERS, T. A. ARCHER, WALTER
L. THOMPSON, THOMAS J. BALENTINE, and
L. D. HENDERSON,

Plaintiffs,

vs.

THE CITY OF BARTLESVILLE, a Municipal
Corporation; KEITH CARTER; BOYD E.
WEBSTER; ROGER JARED; CALDWELL-GEORGE
& ASSOCIATES, a partnership composed of
ROBERT CALDWELL and FRED GEORGE;
and ROBERT CALDWELL and FRED GEORGE,
Individually; GREENWALT-ARMSTRONG,
a partnership composed of JACK
GREENWALT and BILL ARMSTRONG; and
JACK GREENWALT and BILL ARMSTRONG,
Individually,

Defendants.

76-C-113-B ✓

FILED

SEP 30 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

MEMORANDUM AND ORDER

The Court has for consideration the following Motions to
Dismiss for failure to state a claim upon which relief can be
granted:

1. The Motion to Dismiss of Caldwell-George & Associates,
a partnership composed of Robert Caldwell and Fred George;
and Robert Caldwell and Fred George, individually;
Greenawalt-Armstrong, a partnership composed of Jack Greena-
walt and Bill Armstrong; and Jack Greenawalt and Bill
Armstrong, individually;
2. The Motion to Dismiss of the City of Bartlesville, a
Municipal Corporation, Keith Carter, Boyd E. Webster and
Roger Jared.

The Court has carefully considered the briefs submitted by
the parties and has perused the entire file.

Plaintiffs bring this action as taxpayers, property owners
and citizens of the City of Bartlesville and others similarly
situation. In this regard, the Court notes that plaintiff have
not requested that this action be certified as a class action.

The action is a result of alleged conspiracy by the de-
fendants in connection with the plans and designs for a flood

control project in the vicinity of plaintiffs.

The City of Bartlesville is a municipal corporation; the defendants, Carter, Webster and Jared are members of the elected City Commission and Carter is the Mayor and Webster is the Vice-Mayor. The two partnerships are engineering and architectural firms who have submitted the plans for the design of the flood project.

JURISDICTION:

Jurisdiction is alleged pursuant to Title 42 U.S.C. §1343.

STATUTES INVOLVED:

Alleged violation of 42 U.S.C. §§1983 and 1985 for deprivation of civil rights and immunities secured by the 5th and 14th Amendments of the Constitution.

MOTION TO DISMISS--CITY OF BARTLESVILLE.

The Court must start with the basic premise that the Supreme Court of the United States has held that a municipality is not a "person" under 42 U.S.C. §1983. *Monroe v. Pape*, 365 U.S. 167 (1961); *Moor v. County of Alameda*, 411 U.S. §93 (1973); *City of Kenosha v. Bruno, et al.*, 412 U.S. 507 (1973). See also *Church of God of La., Inc. v. Monrow-Ouachita R.P.C.*, 404 F.Supp. 175 (USDC, WD La. 1975); *Naprstek v. City of Norwich*, 405 F.Supp. 521 (USDC, ND NY 1976). Further, it cannot be held vicariously liable for the acts of its officers that allegedly might violate the civil rights of plaintiffs so as to permit monetary recovery from them out of the City's Treasury. *Moor et al. v. County of Alameda*, supra.

In *Dewell v. Lawson*, 489 F.2d 877 (10th CCA 1974), the Tenth Circuit said:

"Dewell contends that the City of Oklahoma City is a 'person' within 42 U.S.C.A. §1983 and therefore subject to a suit for damages. It is well established that a municipality is not a 'person' within the meaning of 42 U.S.C.A. §1983. *Monroe v. Pape*, 365 U.S. 167 (1961); *Egan v. City of Aurora*, 365 U.S. 514 (1961). 11 Okl.St. Ann. (1973 p.p.) §1755 constitutes a waiver of liability applicable to any city or town to the extent of a claim not in excess of \$2,000 arising out of the performance of, or the failure to perform, a discretionary function or duty,

whether or not the discretion is abused. 11 Okl.St. Ann. (1973 p.p.) §1754. A federal court will take judicial notice of the public laws of the states. Bowen v. Johnston, 306 U.S. 19 (1939); Pure Oil Company v. State of Minnesota, 248 U.S. 158 (1918). In Moor v. County of Alameda, 411 U.S. 693 (1973), the Supreme Court held that all municipalities are excluded from liability under the Civil Rights Act regardless of whether their immunity has been lifted by state law. Therefore, regardless of 11 Okl.Stat. Ann. §1755, Oklahoma City cannot be liable under the Civil Rights Act."

In discussing both §§1983 and 1985, as applicable to Civil Rights actions against a municipality, the Court said in Steel Hill Development, Inc. v. Town of Sanbornton, 335 F.Supp. 947 (USDC NH 1971):

"I first consider the question of whether a cause of action may be maintained against the town under 42 U.S.C. §§1983 and 1985. It must be recognized that Monroe v. Pape, 365 U.S. 167 (1960), particularly footnote 50 at page 191, can be used as authority for the holding that a municipal corporation is not a 'person' within the meaning of 42 U.S.C. §1983 for any purpose. Shelburne v. New Castle County, 293 F.Supp. 237, 241 (D.Dell 1968). This approach, however, ignores the fact that a municipality can effectively deprive a person of rights, privileges, and immunities secured by the Constitution, and that speedy injunctive relief may be the only way of preventing irreparable harm. The holding of the Tenth Circuit in Dailey v. City of Lawton, 425 F.2d 1037 (10th Cir. 1970), that footnote 50 in Monroe v. Pape has been misconstrued makes good sense and good law:

"We read that footnote as differentiating between actions for damages and actions for equitable relief and as intending no bar to equitable actions for injunctive relief against invasions of a plaintiff's federal constitutional rights by municipal action. This view is supported by Admas v. City of Park Ridge, 7 Cir. 293 F.2d 585, 587. 425 F.2d 1037, 1038-1039."

"I hold that an action may be maintained against the defendant town under 42 U.S.C. §1983 for injunctive relief, but not for damages.

"No cause of action may be maintained against the town for conspiracy under 42 U.S.C. §1985 because a municipality acting in its sovereign capacity cannot be a conspirator. Agnew v. City of Compton, 239 F.2d 226 (9th Cir. 1957)."

In Shadid v. Oklahoma City, 494 F.2d 1267 (10th Cir. 1974)

the Tenth Circuit Court said:

"Furthermore, as to appellant's claim under 42 U.S.C. §§1983 and 1985, a municipal corporation is not a 'person' within the contemplation of those sections. See e.g., Bush v. Robinson, 442 F.2d 393 (3rd Cir. 1971); Spampinato v. City of New York, 311 F.2d 439 (2nd Cir. 1962), cert. denied 372 U.S. 980 (1963), rehearing denied 374 U.S. 818 (1963)."

In *City of Kenosha v. Bruno*, 412 U.S. 507, at 512, 513 (1973) the Supreme Court said:

"The District Court relied on *Schnell v. City of Chicago*, 407 F.2d 1084 (CA7 1969, and *Adams v. City of Park Ridge*, 293 F.2d 585 (CA7 1961), in holding that Monroe was limited to actions for damages, and that cities were proper defendants under §1983 where equitable relief was sought. *Adams*, supra, in turn, relied on this Court's per curiam opinion in *Homes v. City of Atlanta*, 350 U.S. 879 (1955). But in none of the three opinions in *Holmes* was the issue of whether or not a municipality is a 'person' within the meaning of §1983 discussed. The authority of that case as support for the proposition that a city is a 'person' under §1983 where equitable relief is sought, but is not a 'person' under the same section where damages are prayed for, is at least seriously weakened by the following observation in *Monroe*, supra, at 191 n.50:

"'In a few cases in which equitable relief has been sought, a municipality has been named, along with city officials, as defendant where violations of 42 U.S.C. §1983 were alleged. See, e.g., *Douglas v. City of Jeannette*, 319 U.S. 157; *Holmes v. City of Atlanta*, 350 U.S. 879. The question dealt with in our opinion was not raised in those cases, either by the parties or by the Court. Since we hold that a municipal corporation is not a 'person' within the meaning of §1983, no inference to the contrary can any longer be drawn from those cases.'

"We find nothing in the legislative history discussed in *Monroe*, or in the language actually used by Congress, to suggest that the generic word 'person' in §1983 was intended to have a bifurcated application to municipal corporations depending on the nature of the relief sought against them. Since, as the Court held in *Monroe*, 'Congress did not undertake to bring municipal corporations within the ambit of' §1983, id., at 187, they are outside of its ambit for purposes of equitable relief as well as for damages. ***." (Emphasis supplied)

The Court, therefore, finds that the Motion to Dismiss as to the City of Bartlesville should be sustained, as to the claim alleged under §1983.

In *Bosey v. City of Euclid*, 496 F.2d 193, 195 (6th Cir. 1974) the Court said:

"***In *Kenosha*, the Court held that the generic word "person" in §1983 does not include a municipal corporation and, therefore, the District Court in that case erred in invoking §1343 jurisdiction over a municipal corporation. 412 U.S. at 513. The plaintiffs in *Kenosha* asserted only a deprivation of §1983; the appellants herein allege violations of §§1983, 1985(3) and 1986. We conclude, however, that this is a meaningless distinction because both §§1985(d) and 1986 employ the word 'person(s)' and the legislative history that the Supreme Court found applicable to §1983 is equally applicable to §§1985(3) and 1986. *Kenosha* is thus applicable to the present case."

The Court, therefore, finds that the Motion to Dismiss as to the City of Bartlesville should be sustained, as to the claim alleged under §1985.

MOTION TO DISMISS OF KEITH CARTER, BOYD E. WEBSTER AND ROGER JARED:

Messrs. Carter, Webster and Jared are members of the elected City Commission of the City of Bartlesville and Mr. Carter is the Mayor and Mr. Webster is the Vice-Mayor.

On a motion to dismiss, the factual allegations of the complaint are to be accepted as true. *Coppinger v. Townsend*, 398 F.2d 392 (10th Cir. 1968); *Sluder v. Cyson* (Tenth Circuit Court of Appeals, No. 75-1589), decided August 9, 1976. Accordingly, the Court is bound by plaintiffs' allegations.

Accepting the factual allegations as true, the Court must determine whether a cause of action based on 42 U.S.C. §§1983 and 1985 may be maintained by plaintiffs against members of the City Council.

The Tenth Circuit said in *Sluder v. Dyson*, *supra*:

"*Monroe v. Page*, 365 U.S. 167 (1961), holds that a municipal corporation is not a 'person' within the meaning of §1983. See also *City of Kenosha v. Bruno*, 412 U.S. 507 (1973). There is, however a body of case law standing for the rule that an action may be maintained against individual members of a city council even though such action cannot be maintained against the city itself. In *Adams v. City of Colorado Springs*, 308 F.Supp. 1397 (D.Colo. 1970); *U.S. reh.den.*, 400 U.S. 855 (1970); the Court held that the doctrine of *Monroe v. Pape*, *supra*, did not preclude the maintenance of an action against the individual members of the Colorado Springs City Council, inasmuch as these individuals were held to be 'persons' within the meaning of §1983. See also *United Farmworkers of Florida Housing Project, Inc. v. City of DelRay Beach, Florida*, 493 F.2d 799 (5th Cir. 1974); *Puckett v. Mobile City Commission*, 380 F.Supp. 593 (S.D. Ala. 1974); *Hernandez v. Noel*, 323 F.Supp. 779 (D.Conn. 1970). We opine that there be little doubt that individual members of city council may, under some circumstances, be held liable in a §1983 action, even though they are entitled to some qualified immunity. See *Scheuer v. Rhodes*, 416 U.S. 232 (1974); *Pierson v. Ray*, 386 U.S. 547; *Williams v. Eaton*, 443 F.2d 422 (10th Cir. 1971)."

In *Scheuer v. Rhodes*, 416 U.S. 232 (1974), the Supreme Court said:

"When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the fact of the pleadings that a recovery is very remote and unlikely but that is not the test. Moreover, it is well established that, in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader."

and further *Scheuer*, supra, said:

"The concept of the immunity of government officers from personal liability springs from the same root considerations that generated the doctrine of sovereign immunity. While the latter doctrine--that the 'King can do no wrong'--did not protect all government officers from personal liability, the common law soon recognized the necessity of permitting officials to perform their official functions free from the threat of suits for personal liability. This official immunity apparently rested in its genesis, on two mutually dependent rationales: (1) the injustice, particularly in the absence of bad faith, of subjecting to liability an officer who is required, by the legal obligations of his position, to exercise discretion; (2) the danger that the threat of such liability would deter his willingness to execute his office with the decisiveness and the judgment required by the public good."

With the above statement in mind, the Statutes in question provide as follows:

Title 42 U.S.C. §1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress."

Title 42 U.S.C. §1985(3) provides:

"If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, of of equal privileges and immunities under the laws; for for

the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy, in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

Plaintiffs, in the instant litigation contend that unless the defendants are prevented from carrying out the bridge and roadway modifications, "those plaintiffs who are property owners within the affected area to be flooded and inundated will have their homes and business either partially or totally destroyed without compensation thereof. Their lives, safety, and property will be placed in jeopardy ***."

The terms of §1983 make it eminently plain that two elements are requisite for recovery. First, the conduct complained of must be done by some person acting under color of law. Second, such conduct must have subjected the plaintiffs to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States. *Peoples Cab Co. v. Bloom*, 330 F.Supp. 1235 (USDC WD Pa 1971); *Gordon v. Toole* (Tenth Circuit Court of Appeals, No. 75-F-510) decided May 12, 1976.

In *Garren v. City of Winston-Salem, North Carolina*, 439 F.2d 140 (4th Cir. 1971), the Court said:

"But we are nevertheless convinced by the heavy weight of the case law that plaintiffs have not stated a claim cognizable under Section 1983 for which jurisdiction is conferred by Section 1343(3). The language of Section 1983 granting redress for the deprivation of any right, privilege or immunity has been consistently construed to embrace only a right, privilege or immunity pertaining to 'personal liberty, not dependent for its existence upon the infringement of property rights,' i.e. see *Hague*

v. Committee for Industrial Organization, 307 U.S. 496, at 531 (Mr. Justice Stone's opinion); Weedle v. Director, Patuxent Institution, 436 F.2d 342 (4th Cir.). See also Eisen v. Eastman, 421 F.2d 560 (2d Cir.); Howard v. Higgins, 379 F.2d 227 (10th Cir.); Bradford Audio Corporation v. Pious, 392 F.2d 67 (2d Cir.); City of Coulter v. Snyder, 396 F.2d 853 (10th Cir.); Willis v. Reddin, 418 F.2d 702 (9th Cir.). 'Where, as here, the infringement is one solely of property rights, §1331 is the applicable jurisdictional statute, and jurisdiction may be sustained only upon satisfaction of the amount in controversy requirement.' Weedle v. Director, Patuxent Institution, supra, 436 F.2d at 343."

In Martin v. King, 417 F.2d 458 (10th Cir. 1969) the Court said:

"***Such acts protect personal civil rights and not natural rights stemming from the ownership of personal property. Howard v. Higgins, 379 F.2d 227 (10th Cir. 1967)."

In Gault v. Capdeboscq, 404 F.Supp. 900 (USDC ED La. 1975) the Court said:

"In order to state a cause of action under §1985(3), it must be alleged that (1) the defendants conspired to go on the premises of another, (2) to deprive any person or class of persons of the equal protection, privileges, or immunities of the law. The plaintiff must allege that there has been an act in furtherance of the conspiracy whereby another was injured in person or property or deprived of any right or privilege of a U.S. citizen. Griffin v. Breckenridge, 403 U.S. 88 (1971)."

A case that can be likened to the instant case is KAO v. Red Lion Municipal Authority, 381 F.Supp. 1163 (USDC MD Pa. 1974), wherein the Court held that in a civil rights suit, to adjudicate plaintiffs' claim that realty had been taken without just compensation would be an unwarranted interference with State Court jurisdiction.

Case law need not be cited in Oklahoma to reveal that the plaintiffs can pursue the claims asserted in the instant litigation in State Court when and if the speculative damages they assert become a reality. Plaintiffs are alleging that if the modification does in fact occur, then in some instances they might suffer a loss. The Oklahoma Constitution makes provision for reverse condemnation actions in situations such as the one plaintiffs complain of.

The Court, therefore, finds that the Motion to Dismiss filed by Keith Carter, Boyd E. Webster and Roger Jared should be sustained.

MOTION TO DISMISS OF CALDWELL-GEORGE & ASSOCIATES, a partnership composed of Robert Caldwell and Fred George; and Robert Caldwell and Fred George, individually; GREENAWALT-ARMSTRONG, a partnership composed of Jack Greenawalt and Bill Armstrong; and Jack Greenawalt and Bill Armstrong, individually:

For the reasons hereinabove stated, the Court finds that this Motion to Dismiss should be sustained.

Additionally, in Ward v. St. Anthony Hospital, 476 F.2d 671 (10th CCA, 1973), the Court said in reference to 42 U.S.C. §1985(3) as to private individuals:

"Admittedly private conspiracies as well as those perpetrated by state authorities may be subject of a suit in certain types of cases. Griffin v. Breckenridge, 403 U.S. 88 (1971). This authority to sue for a private conspiracy, however, has been expressly limited:

"'That the statute was meant to reach private action does not, however, mean that it was intend-d to apply to all tortious, conspiratorial interferences with the rights of others ***. The constitutional shoals that would lie in the path of interpreting §1983(3) as a general federal tort law can be avoided by giving full effect to the congressional purpose--by requiring, as an element of the cause of action, the kind of invidiously discriminatory, motivation stressed by the sponsors of the limiting amendment***. The language requiring intent to deprive of equal protection, or equal privileges and immunities, means there must be some racial or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action. The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all.'"

REQUEST FOR INJUNCTION:

Since the Court has sustained the Motion to Dismiss, it really need not discuss the request for injunction except to state that in seeking an injunction the remedy is only available where the injury is actual or positive and substantial, and is not adequately remediable at law. The injury must be actual or threatened and not fanciful, merely possible, doubtful, eventual or speculative.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Motions to Dismiss be and the same are hereby sustained and the cause of action and complaint are hereby dismissed.

Entered this 30 day of September, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BRENT FIELDS,

Petitioner,

v.

RICHARD CRISP, Warden,

Respondent.

NO. 76-C-196-B

FILED

SEP 29 1976

O R D E R

The Court has for consideration the pro se, indigent pauper's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by Brent Fields in the United States District Court for the Eastern District of Oklahoma and transferred by that Court to this District pursuant to 28 U.S.C. § 2241(d).

Petitioner is a prisoner in the Oklahoma State Penitentiary pursuant to conviction by jury of burglary in the second degree after former conviction of a felony, Case No. CRF-72-119. He was sentenced in the Tulsa County District Court of Oklahoma on April 10, 1972, to twenty years.

He asserts as grounds for his petition that the sentence provided by the applicable Statute of the State of Oklahoma is seven years for the crime of burglary in the second degree, that he has served seven years, and the sentence is excessive and in violation of his right against cruel and unusual punishment as guaranteed by the Eighth Amendment to the Constitution of the United States. It appears that the basis of his contention is that the written Judgment and Sentence on Conviction refers to "second degree burglary" without mention of the second stage of his trial regarding the enhancement of punishment for a person convicted after former conviction of a felony.

This Court has on two prior occasions considered § 2254 petitions by this prisoner, namely cases No. 74-C-13 and No. 74-C-604. In each of those cases the Court's decision was entered on the merits after review of the transcript of the State proceedings. From those prior habeas corpus proceedings, the Court is thoroughly familiar with the State proceedings and although it cannot be determined from the file before the Court whether petitioner appealed, as required prior to a Federal petition, the Order dated April 1, 1976, denying petitioner's application for post-conviction appeal in the District Court of Tulsa County, State of Oklahoma, the Court is aware that the petitioner presented the issue of

excessive punishment by direct appeal to the Oklahoma Court of Criminal Appeals, albeit not on the specific ground he asserts herein, and his conviction and sentence was affirmed. Fields v. State, Okl. Cr., 506 P.2d 919 (1973). Further the petitioner filed a post-conviction proceeding denied by the District Court of Tulsa County, PC-74-699, and affirmed by the State appellate Court. Therefore, petitioner's State remedies have been exhausted and the Court finds that additional review of the State transcript, which has been returned to the State for retention, is not required herein.


Petitioner was tried in two stages in the State prosecution, the first stage to determine his guilt or innocence of second degree burglary, the second stage in regard to his being a second offender and permitting enhanced punishment. Therefore, at most petitioner presents a clerical or scriveners error in the written indicia of the Judgment and Sentence which does not include the "AFCF" identification that he had been convicted and sentenced for the crime of second degree burglary after former conviction of a felony. This is not error of constitutional dimension so as to invoke Federal habeas corpus jurisdiction.

Any additional argument to the validity of the sentence, such as his age at the time of the former convictions, has been determined adversely to the petitioner in a prior petition, the prior determination on the merits, and the ends of justice do not require additional consideration of the prior allegation. Maxwell v. Turner, 411 F.2d 805 (10th Cir. 1969); Sanders v. United States, 373 U. S. 1 (1963).

The petition presently before the Court is without merit and should be denied without appointing counsel, requiring a response, or the necessity of an evidentiary hearing.

IT IS, THEREFORE, ORDERED that this third petition for writ of habeas corpus of Brent Fields be and it is hereby denied and the case is dismissed.

Dated this 29th day of September, 1976, at Tulsa, Oklahoma.


CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROBERT HERBERT MITCHELL,

Petitioner,

v.

RICHARD CRISP, Warden, et al.,

Respondents.

NO. 76-C-260-B

FILED

SEP 29 1976

O R D E R

The Court has for consideration the pro se, in forma pauperis petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by Robert Herbert Mitchell. He is a prisoner in the Oklahoma State Penitentiary, serving a sentence of 18 years imposed April 29, 1975, upon his conviction by jury in the Tulsa County District Court of first degree burglary in case No. 75-151. This conviction was appealed to the Oklahoma Court of Criminal Appeals and the conviction was affirmed. Mitchell v. State, Okl. Cr., 549 P.2d 96 (1976).

Petitioner demands his release from custody and as grounds therefor alleges that:

1. He was denied effective assistance of counsel;
2. Evidence of witnesses unreliable and uncontested;
3. Denied transcript at preliminary hearing, and trial; and
4. Denied appeal right by ineffective assistance of counsel.

The Court finds that Petitioner's allegations are bald conclusions unsupported by any factual allegation whatsoever. Therefore, the petition is legally insufficient to entitle petitioner to an evidentiary hearing and may be denied without prejudice. Cassell v. People of State of Oklahoma, 373 F.Supp. 815 (E.D.Okla. 1973); Martinez v. United States, 344 F.2d 325 (10th Cir. 1965); Lorraine v. United States, 444 F.2d 1 (10th Cir. 1971); Moore v. Anderson, 474 F.2d 1118 (10th Cir. 1973).

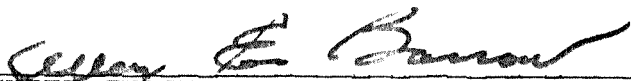
Further, by Petitioner's own admission on the face of his petition, Petitioner has not exhausted his State remedies by State post-conviction proceeding pursuant to 22 O.S.A. § 1080, et seq., particularly on the inadequacy of counsel issue, and his petition to this Court is premature for failure to exhaust adequate and available remedies in the State of Oklahoma.

For the reasons stated and until the defects are cured, the petition should be denied without prejudice.

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus

of Robert Herbert Mitchell be and it is hereby denied without prejudice and the case is dismissed.

Dated this 29th day of September, 1976, at Tulsa, Oklahoma.



CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DARREL WAYNE HILL,

Petitioner,

v.

STATE OF OKLAHOMA, et al.,

Respondents.

NO. 76-C-17

FILED

O R D E R

SEP 29 1976

The Court has for consideration the pro se, in forma pauperis, petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by Darrel Wayne Hill, and response thereto.

Having carefully reviewed the file and being fully advised in the premises, the Court finds:

Petitioner is a prisoner in the Oklahoma State Penitentiary at McAlester, Oklahoma, as a result of judgment and sentence rendered upon his pleas of guilty in case No. CRF-70-689 and case No. CRF-70-690 in the District Court of Tulsa County, Oklahoma. The State Court found petitioner guilty in case No. CRF-70-689 of the crime of robbery with firearms after former conviction of a felony and sentenced him to confinement in the Oklahoma State Penitentiary for a term of ten years. In case No. CRF-70-690, the same Court found petitioner guilty of the crime of unlawful possession of firearms after former conviction of a felony and sentenced petitioner to confinement in the State Penitentiary for a term of eight years, said sentence to run consecutively to the sentence imposed in case No. CRF-70-689.

Petitioner demands his release from custody and as grounds therefor alleges that he is being deprived of his rights under the Constitution of the United States of America. However, petitioner admits and the respondent agrees that petitioner has not exhausted his State remedies on but one of his allegations in the petition to this Court. Therefore, there being no principle in the realm of habeas corpus better settled than that adequate and available State remedies must be exhausted prior to a consideration of an issue in the Federal Courts, Hoggatt v. Page, 432 F.2d 41 (10th Cir. 1970), this Court will consider only the one issue properly before it and no others; and the petition should be denied without prejudice as to the allegations on which State remedies are not exhausted.

The one issue the Court will consider herein is petitioner's allegation of "compounding a felony" in which he claims the firearm involved was a toy pistol which could not fire a bullet of any kind, and in which he further asserts that this firearm was the basis of both the robbery with firearms charge and the possession of firearms charge, which he feels is double jeopardy. State remedies as to this contention have been exhausted by a proceeding treated by the Oklahoma Court of Criminal Appeals as an appeal from the denial of post-conviction relief in their Order dated and filed January 21, 1974, affirming the denial of post-conviction relief.

First, petitioner contends that the firearm involved was in reality a "toy pistol," and that a toy pistol does not satisfy the definition of firearms employed in the relevant criminal statutes under which he was convicted as interpreted in the case of Coleman v. State, Okl. Cr., 506 P.2d 558 (1972). However, the Coleman decision specifically holds that the definition of firearm established therein applies prospectively only and has no application to cases filed prior to December 7, 1972. Petitioner was convicted in 1970, prior to December 7, 1972, and even if he was using a "toy pistol" as he claims, he is thereby provided no relief from his convictions. See, Smith v. State, Okl. Cr., 378 P.2d 790 (1963). "It is a general rule that the Federal Courts will follow the interpretation of the constitution and laws of a State by the highest Court of that State, unless such interpretation is inconsistent with the fundamental principles of liberty and justice." Pearce v. Cox, 354 F.2d 884, 891 (10th Cir. 1965) cert. denied 384 U. S. 976, 384 U. S. 977; Goldsmith v. Cheney, 447 F.2d 624 (10th Cir. 1971).

Second, petitioner contends that possession of firearms after former conviction of a felony in violation of 21 O.S. 1961, § 1283, and conviction of robbery with a firearm after former conviction of a felony in violation of the statute in effect at the time of his plea, 21 O.S. 1925, § 801, is double jeopardy. Even though the firearm involved should have been one and the same as to both crimes, the crime of possession of firearms after former conviction of a felony was complete the moment he so took possession of the firearm. During the continuing commission of said crime, the commission of a robbery with the firearm is a separate and distinct crime, the latter requiring proof of a fact which the other does not.

The Supreme Court of the United States has held that the test to be applied to determine whether there are two offenses or only one, where the same act or transaction constitutes a violation of two distinct statutory provisions, is whether each provision requires proof of a fact which the other does not. Blockburger v. United States, 284 U. S. 296 (1932); Smith v. Gaffney, 462 F.2d 663 (10th Cir. 1972).

The Court finds that as a matter of law petitioner is not entitled to relief on his contentions regarding the issue of double jeopardy. Therefore, there is no necessity for this Court to hold an evidentiary hearing. Ortez v. Baker, 411 F.2d 263 (10th Cir. 1969) cert. denied 396 U. S. 935.

The petition for writ of habeas corpus should be denied on the merits as to the double jeopardy issue, including the "toy pistol" claim.

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Darrel Wayne Hill be and it is hereby denied on the merits as to the double jeopardy issue, including the "toy pistol" claim, and the petition is denied without prejudice for failure to exhaust adequate and available State remedies as to the remaining issues, and the case is dismissed.

Dated this 29th day of September, 1976, at Tulsa, Oklahoma.


CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-vs-)
)
RUFUS B. MOLETT, ET AL.,)
)
Defendants.)

Civil Action No. 76-C-52-C

FILED
SEP 29 1976
Jack C. Silver, Clerk
U S DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER comes on for consideration this 28th day of September, 1976, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the defendant American National Bank, Bristow, Oklahoma, appearing by its attorney, David H. Loeffler; and the defendants Rufus B. Molett and Sophia A. Molett appearing not.

The Court, being fully advised and having examined the file herein, finds that American National Bank, Bristow, Oklahoma, was served with Summons and Complaint on March 10, 1976, as appears from the Marshal's Return of Service filed herein; and Rufus B. Molett and Sophia A. Molett were served by publication, as appears from Proof of Publication filed herein.

It appears that American National Bank, Bristow, Oklahoma, has duly filed its Answer and Cross-Complaint on June 22, 1976, and that Rufus B. Molett and Sophia A. Molett have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note, covering the following described real property located in Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

The West Half (W/2) of Lot Eight (8), and Lot Nine (9), in Block One Hundred Three (103), in the Original Town, now City, of Bristow, Creek County, Oklahoma, according to the recorded plat thereof;

That the defendants Rufus B. Molett and Sophia A. Molett did, on the 10th day of April, 1974, execute and deliver to the United States of America, acting through the Farmers Home Administration, their mortgage and mortgage note in the amount of \$8,150.00, with 8-1/4 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants Rufus B. Molett and Sophia A. Molett made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued, and that by reason thereof, the above-named defendants are now indebted to the plaintiff in the amount of \$9,631.75 as of March 31, 1976, plus interest from and after said date at the rate of 8-1/4 percent per annum, until paid, plus the cost of this action, accrued and accruing.

The Court further finds that Rufus B. Molett and Sophia A. Molett made, executed and delivered to the American National Bank, Bristow, Oklahoma, a promissory note in the amount of \$2,848.68, and as security for said note made, executed and delivered to said Bank their mortgage covering the above-described property. That there remains unpaid on said note the amount of \$2,466.74, which includes principal and interest.

The Court further finds that the defendants Rufus B. Molett and Sophia A. Molett made default under the terms of the aforesaid promissory note and mortgage securing the same by reason of their failure to make payments thereon, which default has continued, and that by reason thereof the said American National Bank, Bristow, Oklahoma, is entitled to a judgment against said defendants in the amount of \$2,466.74, principal and interest, attorneys fees of \$740.00, and the costs of this action, and a

further decree that said Bank has a valid and subsisting mortgage covering said property, which mortgage is inferior to the first mortgage lien of the plaintiff herein, and that said Bank is entitled to foreclosure of its said mortgage.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants Rufus B. Molett and Sophia A. Molett, in rem, for the sum of \$9,631.75, with interest thereon at the rate of 8-1/4 percent per annum from March 31, 1976, plus cost of this action, accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the American National Bank, Bristow, Oklahoma, have and recover, in rem, amount of \$2,466.74, principal and interest, attorneys' fees of \$740.00, and the costs of this action, but that such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof first in satisfaction of plaintiff's judgment, and secondly in satisfaction of defendant's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants, and each of them, and all persons claiming under them since the filing of the

complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

(Signed) H. Dale Cook

United States District Judge

APPROVED:



ROBERT P. SANTEE
Assistant United States Attorney
Attorney for Plaintiff, United
States of America



DAVID H. LOEFFLER, Attorney for
Defendant, American National Bank,
Bristow, Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

EARLENE ALLEN,)
)
Plaintiff,)
)
vs.) No. 76-C-11-B
)
ST. JOHN'S HOSPITAL,)
)
Defendant.)
_____)

ORDER

The Court has for consideration Defendant's Motion to Dismiss in its entirety and has carefully perused the entire file, the briefs and all of the recommendations concerning said Motion, and being fully advised in the premises, finds:

That the Defendant's Motion should be granted, for the reason that the causes of action by the Plaintiff under 42 U.S.C. §1981 and 42 U.S.C. §2000e are time-barred by the applicable state statute of limitations, which is Title 12, Oklahoma Statutes, Section 95(3) pertaining to tortious "injuries to the rights of another."

IT IS, THEREFORE, ORDERED that the Motion of Defendant to Dismiss should be and hereby is GRANTED, and the causes of action and Complaint of the Plaintiff are hereby DISMISSED with prejudice.

Dated this 29th day of September, 1976.

Alan F. Sams
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

GENERAL CREDIT COMPANY,)
)
Plaintiff,)
)
vs.)
)
MORRIS POPE, JR., and)
ANNEBELLE POPE,)
)
Defendants,)
)
and)
)
U.S. POSTAL SERVICE, Payroll)
Department, Tulsa, Oklahoma,)
)
Garnishee.)

No. 76-C-217-C ✓

FILED

SEP 28 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER SUSTAINING THE MOTION OF
THE PLAINTIFF FOR SUMMARY JUDGMENT

The question presented here is easily stated. Is the United States Postal Service subject to garnishment suits on an employee's indebtedness? The answer is not so easily resolved.

There is no dispute as to the facts which have brought this case here. The record shows that a Judgment was entered on May 24, 1973 in favor of the plaintiff, General Credit Company and against Morris Pope, Jr. and Annie Bell Pope in the District Court, Special Judges Division of Tulsa County, Oklahoma. On May 4, 1976, in the District Court of Tulsa County, the plaintiff issued a garnishee summons to the United States Postal Service as garnishee of Morris Pope, Jr. The United States Postal Service removed this case to this Court under Title 28 U.S.C. § 1441. Under Title 39 U.S.C. § 409(a) (1970) the United States district courts have original but not exclusive jurisdiction over all actions brought against the Postal Service.

No genuine issue as to any material fact exists in determining

the immunity question. The plaintiff, General Credit Company, has moved for summary judgment pursuant to Rule 56 of the Fed. R.Civ.P. The Garnishee, United States Postal Service has also moved for summary judgment. The Court has perused the entire file and is fully advised in the premises. Where no genuine issue of material fact exists Summary Judgment is appropriate under Rule 56. Avrick v. Rockmont Envelope Co., 155 F.2d 568 (10th Cir. 1946).

The courts which have previously examined the question of immunity from garnishment are in disagreement as to the answer. In the case of Drs. Macht, Podore & Associates, Inc. v. Girton, 392 F.Supp. 66 (S.D. Ohio 1975) the court held that while Title 39 U.S.C. § 401(1) (1970) allows the Postal Service to sue and to be sued, the "special circumstances" doctrine of F.H.A. v. Burr, 309 U.S. 242, 60 S.Ct. 488, 84 L.Ed.2d 724 (1940) should apply to bar a garnishment proceeding brought against the Postal Service. The Girton court did not specifically outline the special circumstances which it applied to bar such a garnishment but approved the reasoning of Detroit Window Cleaners Local 139 Ins. Fund v. Griffin, 345 F.Supp. 1343 (E.D. Mich. 1972) and Lawhorn v. Lawhorn, 351 F.Supp. 1399 (S.D. W.Va. 1972) which held that garnishment proceedings would unduly hamper the efficiency of the Postal Service. Girton, at 68.

The case of Dennis v. Blount, 497 F.2d 1305 (9th Cir. 1974) was an appeal from an administrative discharge of a postal employee for failure to pay a just debt and because of Ms. Dennis' past record. Ms. Dennis was discharged pursuant to Title 5 U.S.C. § 7512 which was made applicable to her by Executive Order 10,988 of January 17, 1962 and Executive Order 11,491 of October 29, 1969. The discharge resulted from a violation of Postal Regulation 39 C.F.R. § 742.735-29(d).^{1/}

^{1/} The Code of Ethical Conduct for Postal Employees now appears in 39 C.F.R. § 447 (July 1, 1975).

39 C.F.R. § 447.11(b) provides in part:
"Each employee, including each special Postal Service employee,

(...cont'd)

In responding to Ms. Dennis' argument that under California law she could not be discharged for failure to pay a debt and therefore was denied the equal protection of the Fifth Amendment, the Ninth Circuit Court of Appeals made the following observation:

"At the outset, it seems clear that there is a valid distinction between federal and non-federal employees. Of more than ordinary significance is the fact that federal employees are not subject to garnishment, while one-half the wages of the other Californians are normally subject to such proceedings. See Cal.Civ.Pr.Code § 690.6 (West, Supp. 1974). No doubt, the government could have made its employees' wages subject to a state garnishment. Instead, however, it chose to protect its employees from the harsh impact of garnishment and its Postal Department promulgated the far less stringent regulation requiring employees to pay their just financial obligations."

Dennis at 1308.

While the foregoing statement appears as dicta since the Dennis court was not faced with a garnishment question, the Ninth Circuit leaves little doubt as to its ruling had the question been presented at that time.

The Postal Service cites to several unpublished federal district court rulings which it asserts have denied similar garnishment attempts. Nalco Credit Corp. v. Turner, C.A. No. 76-323 (E.D. Mo. 1976); Nolan v. Woodruff, C.A. No. 75-756 (D.D.C. 1975); Commerce Bank of Kansas City v. Fugate, C.A.

(1/ ...cont'd)

is required to read and become familiar with this Code. A violation of this Code may be cause for remedial or disciplinary action, including discharge."

39 C.F.R. § 447.26 provides:

"An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State, or local taxes. For the purpose of this section, a 'just financial obligation' means one acknowledged by the employee or reduced to judgment by a court, and 'in a proper and timely manner' means in a manner which the Postal Service determines does not, under the circumstances reflect adversely on the Postal Service as his employer. In the event of dispute between an employee and an alleged creditor, the Postal Service is not required to determine the validity or amount of the disputed debt."

No. 20470-2 (W.D. Mo. 1973); Bean, Phillips & Bean v. Moore, C.A. No. 6305 (E.D. Tenn. 1972); Mid-Town Finance Co. v. Russell, C.A. No. 6307 (E.D. Tenn. 1972). Except for Nalco Credit Corp. v. Turner, supra, as examined below, these district court rulings have not been made available to this Court nor has the Postal Service presented the reasoning which was employed to reach this result.

The case of Standard Oil v. Starks, 528 F.2d 201 (7th Cir. 1975) has announced an opposite conclusion. The Standard Oil court examined the purpose of the Congress in creating the United States Postal Service and the independent authority under which it operates.

"Indeed, in enacting the Postal Reorganization Act, Pub.L. 91-375, the Congress specifically declared its purpose to be to authorize the operation of the postal service in a 'business-like way,' 1970 U.S.Code Cong. & Admin. News, pp. 3649, 3660. It wished to make the delivery of the mail a self-supporting enterprise. 39 U.S.C. § 2401. To this end it removed the USPS from the political arena by placing it under a Board of Governors appointed by the President. 39 U.S.C. §§ 202-05. This Board -- rather than the President -- would select the Postmaster General and also hold the sole power to remove him; his Deputy would be selected by the Board and the Postmaster General and serve at their pleasure. The Act also confers on the United States District Court original but not exclusive jurisdiction 'over all actions brought by or against the Postal Service' with all of the procedures of Title 28 being made applicable. 39 U.S.C. § 409(a). Additionally, the USPS is given authority, with the prior consent of the Attorney General, to employ its own attorneys. 39 U.S.C. § 409(d). Finally, the Act has a sweep-provision that, outside of certain enumerated exceptions, 'no Federal contracts, property, works, officers, employees, budgets, or funds . . shall apply to the exercise of the powers of the Postal Service.' 39 U.S.C. § 410."

Standard Oil at 202.

The court considered the powers granted to the United States

Postal Service ^{2/} and found that they are powers which are common to any business organization.

The Standard Oil court made the following observation in regard to the ability of Congress to limit the phrase "to sue and be sued:"

" Congress knows well enough how to draw such statutes. In addition to the forty cited in Keifer, supra, 306 U.S. at 390-91, n. 3, 59 S.Ct. 516, [Citation Below] there have been five statutes of that type enacted: 15 U.S.C. § 634(b)(1); 38 U.S.C. § 1820(a)(1); 12 U.S.C. § 181(a); 12 U.S.C. § 341; 20 U.S.C. § 1132C-2(b)(2); 35 U.S.C. § 1154. Moreover, in the Act here, the Congress specifically restricted the consent to suit in two respects only: (1) the applicability of the Federal Tort Claims Act and (2) procedural matters relating to suits against the United States. 39 U.S.C. § 409. These specific and isolated limitations indicate beyond doubt that the waiver to sue and be sued applied to all other litigation. (Citations Omitted). Since both Burr and Menihan [Citations Below] involved garnishments and are both prior in time of the Postal Reorganization Act, it is reasonable to assume that the Congress intended that the 'sue and be sued' clause embraced garnishment proceedings against the USPS." Standard Oil at 203.

This Court concurs in the reasoning and result of Standard Oil. Immunity does not apply to all instrumentalities which perform the government's work. Keifer & Keifer v. R.F.C., 306 U.S. 381, 59 S.Ct. 516, 83 L.Ed. 784 (1939). Congressional waivers of governmental immunity should be liberally construed. F.H.A. v. Burr, supra. It is presumed that where Congress has launched a governmental agency into the commercial world with the authority to sue and be sued, immunity does not apply. F.H.A. v. Burr, supra. Sovereign immunity is not presumed. R.F.C. v. Menihan Corp., 312 U.S. 81, 61 S.Ct. 485, 85 L.Ed. 595 (1941). Had Congress desired to protect the Postal Service

^{2/} Independent Status, 39 U.S.C. § 201; Power to Sue and be Sued, 39 U.S.C. § 401(1); Power to Contract and Settle Claims, 39 U.S.C. §§ 401(3)-(9); Power to Regulate Employment and Transportation, 39 U.S.C. §§ 1001 et seq. and § 4001 et seq.; Authority to Exercise its Specific Powers, 39 U.S.C. § 401(10). See Standard Oil at 203.

from a garnishment proceeding it could have easily included the restriction.

On a motion to quash service of summons issued on the United States Postal Service the United States District Court for the Eastern District of Missouri reasoned that the Postal Service is not sufficiently within the realm of commercial activity to lose its immunity to the service of garnishments. Nalco Credit Union v. Turner, supra. In a footnote the Turner court rejected the result of Standard Oil in determining that it is inapposite. This Court concludes that the United States Postal Service has been launched by the Congress into the commercial world with sufficient trappings of any common business organization to have effectively removed any immunity from garnishment proceedings.

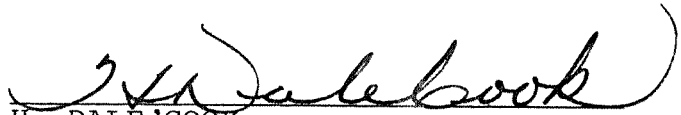
In reaching this conclusion the Court recognizes and has considered the doctrine announced in F.H.A. v. Burr, supra, which requires that the phrase "to sue and be sued" must be interpreted in light of special circumstances which may invoke Immunity. The Postal Service asserts that the Postal Reorganization Act was adopted to cure a variety of ills many of which resulted from an excessive number of executive agencies and administrative duties. The Postal Service argues that subjecting it to garnishment proceedings will unduly burden it with administrative problems and further interfere with its existing fiscal obligations. This argument is inconsistent with Postal Service regulations (39 C.F.R. §§ 447, 447.26) which subject a postal employee to administrative discharge for failure to pay a just debt. The Postal Service has employed its administrative procedure in discharging employees who fail to pay just debts. See Dennis v. Blount, supra. In enforcing its Code of Ethical Conduct which requires the payment of just debts, it is difficult to imagine how the processing of a garnishment could be more costly and burdensome than processing an administrative discharge.

The Postal Service is concerned about its image and reputation and may effectively protect its favorable position in the community by recognizing that its employees are subject to a garnishment proceeding. Were the Court to rule otherwise the postal employee may find a sanctuary which affords protection from his just debts. The Court finds that no special circumstances are present which would mandate the invocation of immunity from garnishment proceedings on behalf of the United States Postal Service.

Accordingly:

IT IS ORDERED ADJUDGED AND DECREED that the Motion of the plaintiff, General Credit Company for Summary Judgment is hereby sustained and that the Motion of the Garnishee, United States Postal Service, for Summary Judgment is denied.

It is so Ordered this 29th day of September, 1976.


H. DALE COOK
United States District Judge

diction, the defendant then set forth his defense.

An examination of the summons in question reveals the following:

The summons was issued on January 12, 1976, signed by Robert Eugene Cotner, as the originator requesting service.

The summons reveals that Larry McSoud was served on January 12, 1976, at 12:00 a.m. Under remarks it was stated: "Serve the per. inst. R. E. Cotner on the phone the above person".

The affidavit on file in the case by the defendant, Elmore A. Page, reveals the following statement under oath:

"I, Elmore A. Page, of lawful age and being first duly sworn upon oath, depose and state that the Summons in this case was delivered to Lawrence A. McSoud by Deputy United States Marshal, and he was requested and did sign receipt for same. He signed receipt for same under the misunderstanding that he was in some manner involved in this suit. At the time said Summons was served at his office, I was not his law partner, and was not in fact a resident or domiciled within the State of Oklahoma, but was in fact a resident of and domiciled within the County of Galveston, State of Texas."

Rule 4(d) of the Federal Rules of Civil Procedure, provides:

"(d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service such copies as are necessary. Service shall be made as follows:

"(1) Upon an individual other than an infant or an incompetent person by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process."

In a deposition of plaintiff taken at Tulsa, Oklahoma, on March 15, 1976, the following testimony was given by plaintiff, commencing at page 6 and 7:

Q. And you want to affirmatively tell me that this has been explained to you, that we're not waiving any personal service on Mr. Page; is that correct?

A. Yes.

Q. And you understand this?

A. Yes.

- Q. And you agree to this?
- A. I agree that you're not waiving that right, yes.
- Q. Now, we're also not waiving the right of what is termed "Venue of the case" or "Jurisdiction of the issues"; for instance, when you served him originally, you maintained he was a resident of Oklahoma, and you are a resident of Oklahoma; is that right?
- A. I don't recall. I said he was a resident. We served him at his law practice.
- Q. You served him at Larry McSoud's office?
- A. Yes, it was Page and McSoud's law firm.
- Q. And your service was obtained on Larry McSoud?
- A. And in Mr. Page's behalf. They called him and asked him if it was all right for him to sign for Mr. Page - I mean they called me and I said as far as I was concerned.

and at page 39:

- Q. You do know Mr. Page lives in Galveston now?
- A. Yes, I - He was seen and I have eyewitnesses that he frequently comes back to Tulsa for different means. I have left word with his law firm; I have tried to contact him. He tries to keep his address confidential as possible. The only possible way that I could possibly go down and I have been informed by acquaintances of mine that live in the area that I wouldn't be able to see him then, but that was the only possible way I's ever be able to discuss it with him.

In plaintiff's response to defendant's answer (which is a pro se response) plaintiff stated:

"I. That plaintiff moves the Court to uphold the summons issued herein as said summons was served in accordance with the law, and as it did constitute proper service upon the defendant. Movant will show the Court that Elmore A. Page has residential propupety(sic) within this district and has been a well known, long time, residential(sic) attorney in said district, and that he presently is and was and has been a partner of a local law firm called "PAGE & MCSOUD" and that Lawrence A. McSoud, Suite 306 Center Building, Tulsa, Okla. is his law partner through which contact with Mr. Page is normally made, at this time.

"II. The defendant himself freely admits that he was and has been properly served with said "summons" by the fact that he had the knowledge to and did retain the law firm of KNIGHT & WAGNER to represent him in this matter, (something he couldnot have done had he not have been served, properly, with said summons.

"III. ***.

"IV. Defendant further admits proper service by the fact that he has already ask for a trail(sic) by jury.

"V. Plaintiff points out that the actions of the defendant herein clearly show his guilt his lack of concern for the courts, (and others) and that he was properly served. His normal action should have been to contact the plaintiff in this matter, out of court, and tryed(sic) to settle this affair without undue strain upon the courts and all parties involved, but instead he has chosen to fight said civil action without first checking to see if there was another way to settle this matter that would better serve us all. Plaintiff contins(sic) that this act alone proves that the defendant was properly served, and further continds(sic) that this act should and does support the plaintiffs allegations against the defendant.

"VI. The defendant is still listed in the Tulsa phone book, as an attorney, and is still a member of the Okla. Bar Association.***."

The Court finds, contrary to the allegations and arguments of the plaintiff, that the defendant has not waived his objection to jurisdiction.

Rule 12(b) of the Federal Rules of Civil Procedure provides, in pertinent part, as follows:

every defense *** shall be asserted in the responsive pleading *** except that the following defenses may at the option of the pleader be made by motion: ***. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.." (Emphasis supplied)

The Court finds that the final clause of Rule 4(d)(1) provides that service may be made upon an individual by delivering a copy of the summons and of the complaint to an agent authorized (1) by appointment or (2) by law to receive service of process. Moore's Federal Practice, Volume 2, ¶4.12.

The phrase "an agent authorized by appointment to receive service of process" is intended to cover the situation where an individual actually appoints an agent for that purpose. There is no showing of actual appointment of Larwrence McSoud as the agent of Elmore A. Page in this case. Assuming arguendo that Lawrence McSoud had been appointed the agent of Elmore A. Page, even with broad authority, it must be shown that the agent had specific authority, express or implied, forthe receipt of service of process.

A review of the entire file and deposition and affidavits reveal that the defendant, Elmore A. Page is a citizen of Galveston, Texas, and that Lawrence A. McSoud was not his agent to accept process.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss for lack of jurisdiction filed by the defendant, Elmore A. Page, be and the same is hereby sustained and this cause of action and complaint are dismissed for lack of jurisdiction.

ENTERED this 28th day of September, 1976.

A handwritten signature in cursive script, reading "Allen J. Bonar", is written over a horizontal line.

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHESTER D. PRIEST, d/b/a)
AMPLE PRODUCTS CO.,)
)
Plaintiff,)
)
)
v.)
)
MIDWEST LITHO AND PUBLISHING)
COMPANY, a Corporation, and)
JIM EAKINS, an Individual,)
)
Defendants.)
_____)

Civil Action No. 75-C-568-13

FILED

SEP 28 1976

Jack C. Smith, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has for consideration Defendants' Motion to Dismiss and Motion to Quash in its entirety and has carefully perused the entire file, the briefs and all recommendations concerning said Motion, and being fully advised in the premises, finds:

That the Defendants' Motion to Dismiss and Motion to Quash should be granted for the reason that the Plaintiff has failed to allege or to establish any lawful basis for the exercise of personal jurisdiction by this Court over either of these non-resident Defendants.

It is, therefore, ORDERED that Defendants' Motion to Dismiss and Motion to Quash should be and is hereby granted without prejudice to this cause being filed in a court of competent jurisdiction in the State of Missouri.

Dated this 28 day of September, 1976.

Allen E. Benson

CHIEF UNITED STATES DISTRICT JUDGE

FILED
JAN 13 1975
Jack G. Silber, Clerk
U. S. DISTRICT COURT

FILED
JAN 28 1975
Jack G. Silber, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE BANK OF GROVE,)
)
Plaintiff,)
)
vs.) 74-C-602-B
)
CHETOPA STATE BANK,)
)
Defendant.)

ORDER

The Court has for Consideration the Motion to Dismiss filed by the defendant; the briefs in support and opposition thereto; the affidavits and exhibits; and having carefully perused the entire file, and, being fully advised in the premises, finds:

This action was originally commenced on December 26, 1974, by the plaintiff, State Bank of Grove, against George Fox and the Chetopa State Bank. A Temporary Restraining Order was entered by the Court on December 30, 1974, restraining and enjoining the defendants from altering, destroying, or secreting any documents, writings or other records in their possession, custody or control involving Everett Larrimore. The hearing on the request for preliminary injunction was set for the 7th day of January, 1975.

Thereafter, on the 7th day of January, 1975, at the scheduled hearing, the Court was advised that defendants desired to file a Motion to Dismiss in two or three days, and plaintiff then requested that the Temporary Restraining Order remain in effect until the ruling on the Motion to Dismiss. Upon agreement of all parties, the Temporary Restraining Order was ordered to remain in effect until such time that a hearing on the merits could be had, and a hearing on the Motion to Dismiss that was to be filed was scheduled for January 14, 1975.

On January 14, 1975, the case was called for hearing on the Motion to Dismiss. At said hearing plaintiff moved to dismiss the defendant, George Fox, and the defendants objected, alleging that George Fox was an indispensable party. The reason for the controversy concerning the defendant, George Fox, was that it was discovered that he was a citizen of Oklahoma. On the same date of the hearing, i.e., January 14, 1975, plaintiff filed its formal Notice of Dismissal.

Thereafter, and on April 8, 1975, the Court entered its order dismissing George Fox without prejudice and overruling the Motion to Dismiss filed by the defendant, The Chetopa State Bank. Plaintiff was granted 10 days to amend its complaint and the defendant, The Chetopa State Bank was granted 10 days thereafter to plead or answer. The First Amended Complaint filed by the plaintiff on April 18, 1975, is identical to the original complaint, the only change made being the deletion, pursuant to the order of the Court, of George Fox, as a defendant.

On June 20, 1975, the defendant, The Chetopa State Bank, filed once again its Motion to Dismiss.

During this time plaintiff has filed various motions for production of documents, which it appears are sought in aid of jurisdiction.

The plaintiff, State Bank of Grove, is a state banking corporation, organized and existing under and by virtue of the laws of the State of Oklahoma, having its principal place of business at Grove, Oklahoma.

The defendant, The Chetopa State Bank, is a state banking corporation, organized and existing under and by virtue of the laws of the State of Kansas, with its principal place of business at Chetopa, Kansas.

The facts giving rise to this litigation can be summarized as follows:

Mrs. Oneeta Manning, an Assistant Vice President of the plaintiff bank, contacted George Fox, an officer and principal stock-

holder of the defendant bank, by telephone, to inquire as to the credit worthiness of one Everett Larrimore. Mr. Larrimore had applied to the plaintiff bank for a loan in the amount of \$50,637.50. Plaintiff alleges that during the conversation, Mrs. Manning also inquired of George Fox as to Mr. Larrimore's title to certain cattle and trucks which Mr. Larrimore proposed to use as collateral to secure the loan. Plaintiff alleges that certain fraudulent misrepresentations were made to plaintiff by George Fox, who is alleged to have been acting as the agent for the defendant bank, as to the credit worthiness of said Everett Larrimore. Plaintiff alleges further that Everett Larrimore has defaulted on said loan and said loan is uncollectable and that the defendant bank, as a result of the fraudulent misrepresentations, is now liable to plaintiff.

The file reflects that service of summons was not effected on the defendant bank until January 17, 1975, seven days after the original motion to dismiss was filed. The question of minimum contact and sufficiency of service was not raised by the first motion to dismiss rules on by the Court inasmuch as service had not yet been had. Therefore, this Court will consider the Motion to Dismiss filed on June 20, 1975, with respect to the minimum contact question and sufficiency of service.

In addition to the Motion to Dismiss presently pending before the Court, the question has been raised by plaintiff as to whether plaintiff should be given an opportunity to develop, through discovery, a basis or foundation for "in personam" jurisdiction.

Rule 4(e) of the Federal Rules of Civil Procedure allows exercise of "in personam" jurisdiction in any manner permitted by state statute.

The applicable Oklahoma Statutes, the Uniform Interstate and International Procedure Act, 12 O.S. §1701.01 et seq. and 12 O.S. (Supp.1975) §187, authorize the Court to exercise personal jurisdiction over a foreign corporation on a cause of action

arising from the acts delineated therein.

Title 12 O.S. §1701.03(a)(5) provides, in pertinent part, as follows:

"(a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's:

"(5) having an interest in, using, or possessing real property in this state;"

In support of its argument that this Court has jurisdiction the plaintiff has offered six (6) exhibits purporting to show that the defendant bank has security and mortgage interests in the State of Oklahoma and which would qualify as an interest in real property. There is no evidence before this Court that this cause of action arises out of the property interests evidenced by these exhibits, and the Court finds that it does not. Plaintiff contends that the transactions evidenced by these exhibits create a strong inference that defendant is engaged in the transaction of business in the State of Oklahoma. The Court finds that the defendant is not engaged in the transaction of business in Oklahoma under 12 O.S. §1701.03(a)(1) and 12 O.S. §187 (Supp.1975), and in addition, that the present cause of action does not arise from any of the transactions evidenced by these exhibits. The Oklahoma "long-arm" statute only apply when the asserted cause of action arises from defendant's activities in this state. *George v. Strick Corp.*, 496 F.2d 10, 13 (10th Cir.1974); *Crescent Corporation v. Martin*, 443 P.2d 111 (Ok1.1968).

Nor can it be said that defendant's act with respect to plaintiff's cause of action constitutes the transaction of business within this State under 12 O.S. §1701.03(a)(1) or 12 O.S.(Supp. 1975) §187. Defendant's sole activity was that of responding to plaintiff's inquiry on one occasion. As the Supreme Court stated in *Hanson v. Denckla*, 357 U.S. 235, 253 (1958):

"The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with a forum State."

The Court finds that defendant's activities in Oklahoma are not sufficient to satisfy the minimum Constitutional requirements of

of due process. Even in sales contract cases, where jurisdiction is extended over a nonresident defendant purchaser, that purchaser either initiated the relationship or actively participated in design specifications. *Vacu-Maid, Inc. v. Covington*, 530 P.2d 137 (Okla. 1974). In this case, the plaintiff relies on his own unilateral activities to support jurisdiction. Under the decision in *Hanson v. Denckla*, supra, this is not enough. See also *Anderson v. Shiflett*, 435 F.2d 1036 (10th Cir. 1971).

The Court specifically finds that 12 O.S. §§1701.03(a)(2), (3), (6) and (7), and 12 O.S. (Supp. 1975) §§187(a)(2)-(4) are inapplicable to this defendant, and, therefore, cannot be the basis of jurisdiction over this defendant.

Title 12 O.S. §1701.03(a)(4) provides, in pertinent part:

"(a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's:

"(4) causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state."

Plaintiff alleges that fraudulent misrepresentations were made to plaintiff by George Fox, as agent for the defendant bank, as to the credit worthiness of Everett Larrimore. Plaintiff alleges further that Everett Larrimore has defaulted on said loan and said loan is uncollectable and that defendant bank, as a result of the fraudulent misrepresentations, is now liable to the plaintiff. In other words, plaintiff claims that the acts of defendant bank outside this state have caused injury to plaintiff in this State because defendant's act was a fraudulent misrepresentation.

In considering a Motion to Dismiss, it is well established that a Court must take the well-pleaded material allegations of the complaint as admitted. However, the only evidence before this Court to indicate that defendant bank solicits business, engages in a persistent course of conduct, or derives substantial revenue

from goods used or consumed or services rendered in this state are the six (6) exhibits purporting to show defendant bank's security and mortgage interests in this state.

The Court finds that these security and mortgage interests do not constitute solicitation of business or a persistent course of conduct. Further, this Court finds no authority for a finding that the "substantial revenue" test can be met merely because defendant bank might collect interest from its security and mortgage interests. Defendant bank in this case is not in the same position as the defendant bank in *Carmack v. Chemical Bank New York Trust Company*, 536 P.2d 879 (Okla. 1975), since that defendant was serving as trustee for Oklahoma employees and actively participating in investment of the funds of these employees. In that case, the activity was not unilateral -- the defendant bank had contacts with all the employees enrolled in the plan. *Id.* at 899.

Nor is the defendant bank in this case in the same position as foreign corporations who derive substantial revenue from sales in this state. See *Paddock v. Bensen Aircraft Corporation*, 293 F.Supp. 745 (W.D.Okla. 1968); *Oral Roberts University v. Automatic Switch Company*, 310 F.Supp. 381 (N.D.Okla. 1970).

In *Russell v. City State Bank of Wellington, Texas*, 264 F.Supp. 572 (W.D.Okla. 1967), the Court held that the cause of action against the Texas bank for alleged conversion of a certificate of deposit did not arise from any contracts or business transactions of the bank in Oklahoma, and that, thus, subjecting the bank to extraterritorial service would violate due process. For this and the foregoing reasons, this Court finds, that, taking all facts well pleaded as true, this Court does not have jurisdiction over the defendant in this case, Chetopa State Bank and Trust Company, and that there is insufficient contact with the forum state by defendant to invoke "long-arm" jurisdiction.

The Court, therefore, finds that the defendant, Chetopa State Bank and Trust Company is not subject to extraterritorial service of process from the Northern District of Oklahoma, and the Motion to Dismiss should be granted.

Plaintiff has requested an opportunity to develop, through discovery, a basis or foundation for 'in personam' jurisdiction. The Court is aware of the decisions in which the plaintiff has been allowed the benefit of discovery. The burden is initially on the plaintiff to make a prima facie showing of jurisdiction over the defendant. The Court finds that plaintiff has not made a prima facie showing that the defendant has sufficient contact with the State of Oklahoma upon which to base "in personam" jurisdiction. The Court is unable to determine from the facts alleged that there exists any basis on which to find that an evidentiary hearing should be conducted. The plaintiff is requesting what has been called a "fishing expedition" to examine the defendant's activities within the State of Oklahoma. Plaintiff apparently wants to examine the totality of the books, records and employees of the Chetopa State Bank and Trust Company in an attempt to establish defendant's supposed minimum contacts with the State of Oklahoma.

This type of fishing expedition was denied in *Russell v. City State Bank of Wellington, Texas*, supra, wherein the Court stated, when the plaintiff wanted to discover contacts which the defendant bank had with the State of Oklahoma:

"The foregoing statutes permit the court to exercise personal jurisdiction over a non-resident on a cause of action arising from the commission of acts enumerated therein. Therefore, it is clear that unless the cause of action in this case has a permissible connection with the enumerated jurisdiction basis the discovery motion would be an exercise in futility, and the court would be justified in denying nonrelevant discovery." *Id.* at 573.

The Court finds that plaintiff has failed to make a prima facie showing of jurisdiction over the defendant and that the discovery would be an exercise in futility.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss filed by the Chetopa State Bank be and the same is hereby sustained, and the cause of action and complaint are dismissed, without prejudice to refile in the appropriate forum.

IT IS FURTHER ORDERED that the Objections are overruled.

IT IS FURTHER ORDERED that the request for discovery filed by the plaintiff be and the same is hereby denied.

ENTERED this 27th day of September, 1976.

A handwritten signature in cursive script, appearing to read "Allen E. Barrow", is written above a horizontal line.

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ALLEN DOUGLAS ELIAS,)
GERALD JEAN AIGRET, and)
GARY L. NUNNALEY,)
)
Petitioners,)
)
vs.)
)
DISTRICT COURT OF TULSA)
COUNTY, OKLAHOMA,)
)
Respondent.)

No. 76-C-480-C ✓

FILED

SEP 28 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has before it for consideration a Petition for Writ of Habeas Corpus filed by Allen Douglas Elias, Gerald Jean Aigret and Gary L. Nunnaley. Said Petition is brought pursuant to 28 U.S.C. §§ 2241, et seq. Petitioners allege they are being restrained of their freedom by virtue of the maintenance of criminal proceedings in the District Court of Tulsa County, Oklahoma, wherein they are charged with Unlawful Possession of Marijuana With Intent to Distribute.

The following factual background is relevant to a determination of the issues presented. Petitioners allege in their Petition for Writ of Habeas Corpus that on January 23, 1974, they were arrested and charged in the District Court of Tulsa County with the offense of Possession of Marijuana with Intent to Distribute. On April 12, 1974, petitioners appeared before Associate District Judge Jay Dalton who announced at that time his intention to sustain the petitioners' Motion to Suppress. The ruling was held in abeyance to enable the State of Oklahoma to seek a Writ of Prohibition from the Oklahoma Court of Criminal Appeals, predicated upon the State's contention that the search which resulted in petitioners' arrest was valid. On June 13,

1975, the Court of Criminal Appeals denied the writ, holding in essence that the merits of the search issue ruled upon by Judge Dalton were not appealable. Thereafter Judge Dalton vacated his order holding his ruling on the Motion to Suppress in abeyance, which resulted in the suppression of the alleged contraband. On or about September 8, 1975, Judge Dalton dismissed the proceedings against petitioners. The State of Oklahoma thereafter again sought appellate review of the search issue on its merits by prosecuting a regular appeal from Judge Dalton's Order of Dismissal. On February 20, 1976, while said appeal was pending, petitioners asked Judge Dalton to vacate his dismissal, reinstate the charge, and require the District Attorney to proceed to trial with the alleged contraband suppressed. The State of Oklahoma then petitioned the Oklahoma Court of Criminal Appeals seeking a Writ of Prohibition to prevent Judge Dalton from vacating his previous Order of Dismissal. The Court of Criminal Appeals declined to assume original jurisdiction. However, Judge Dalton declined to vacate his Order of Dismissal. On July 14, 1976, the Oklahoma Court of Criminal Appeals on its own motion dismissed the State's attempted appeal from Judge Dalton's Order of Dismissal. Thereafter, on August 12, 1976, the State of Oklahoma refiled the same charge against petitioners. New arrest warrants were issued and served, and petitioners each posted bond. At the initial appearance before the Magistrate, the defendants voiced their objections to the legality of the proceedings and moved for a dismissal, which was denied. Thereafter, on August 30, 1976, petitioners instituted an original proceeding before the Oklahoma Court of Criminal Appeals, seeking assumption of original jurisdiction and issuance of a Writ of Prohibition to the District Court of Tulsa, Oklahoma, asserting objections to the legality of the current proceedings. A hearing was held on September 8, 1976, and original jurisdiction was declined.

In support of their petition, petitioners first contend that the refiled proceedings are barred by collateral estoppel. As stated by the Supreme Court in Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970): "[Collateral estoppel] means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit."

The factual status of the proceeding in the District Court of Tulsa County, as stated by petitioners, appears to be that a criminal prosecution for Possession With Intent to Distribute has been refiled against petitioners and they are free on bond. There is nothing in the record before this Court to show that the evidence which was the subject of the initial suppression hearing will even be introduced. It would be premature for this Court to consider granting a Writ of Habeas Corpus on an issue before it has been presented. As stated in United States v. Fay, 231 F.Supp. 385 (S.D.N.Y. 1964): "The Federal writ may not be used as a form of a declaratory judgment or a writ of error to test petitioner's future rights."

Furthermore, the Supreme Court in Hoag v. New Jersey, 356 U.S. 464, 78 S.Ct. 829, 2 L.Ed.2d 913 (1957) has stated:

"Despite its wide employment, we entertain grave doubts whether collateral estoppel can be regarded as a constitutional requirement."

As provided in 28 U.S.C. § 2241(c)(3): "The writ of habeas corpus shall not extend to a prisoner unless . . . he is in custody in violation of the Constitution or laws or treaties of the United States." In Hoag, the court also recognized that "to try to outguess the state court . . . would be wholly out of keeping with the proper discharge of our difficult and delicate responsibilities under the Fourteenth Amendment in determining whether a State has violated the Federal Constitution." Likewise, it would be ill-advised for this Court to presuppose what

action may be taken by the State court if faced with the assertion of collateral estoppel if the issue of suppression of evidence is raised.

It is the general rule that federal courts should not, absent extraordinary circumstances, interfere with the judicial administration and process of State courts prior to trial and conviction even though the State prisoner claims that he is held in violation of the Constitution. Ex parte Royall, 117 U.S. 241, 6 S.Ct. 734, 29 L.Ed. 868 (1886). As recognized by the court in Grizzle v. Turner, 387 F.Supp. 1 (W.D. Okla. 1975), however, the federal courts do have the power in a proper case to discharge a prisoner in advance of trial if he is restrained of his liberty in violation of the federal Constitution or laws. Fay v. Noia, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963). In Grizzle, the petitioner was charged with the offense of Murder in the First Degree and was convicted of a lesser included offense. The petitioner appealed, and the court reversed the conviction because the trial court failed to conduct separate trials for each defendant. The appellate court then directed that the case be severed and remanded for a new trial. The federal court, thereafter, granted petitioner's Writ of Habeas Corpus noting the Supreme Court's holding in Green v. United States, 355 U.S. 184, 78 S.Ct. 221, 2 L.Ed.2d 199 wherein the Court stated:

"The constitutional prohibition against 'double jeopardy' was designed to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense."

If this Court were faced with the possibility that a denial of the Writ of Habeas Corpus in this case would result in the petitioners being subjected to "double jeopardy," the Court might be warranted in granting the Writ prior to commencement of the trial. That eventually is not, however, apparent in the case at bar. The Supreme Court recently considered the concept of "double jeopardy" in regard to appellate review in a trilogy

of cases: United States v. Wilson, 420 U.S. 332 (1975); United States v. Jenkins, 420 U.S. 358, (1975); and Serfass v. United States, 420 U.S. 377, (1975). In Serfass, criminal charges were brought against petitioner. He filed a pretrial motion, accompanied by an affidavit, to dismiss the indictment. The District Court dismissed the indictment. The Government appealed the dismissal. Petitioner contended that the appellate court lacked jurisdiction to entertain the appeal because the Double Jeopardy Clause of the Fifth Amendment prohibited further prosecution. The Supreme Court noted that although articulated in different ways by that Court, the constitutional prohibition against "double jeopardy" was designed to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense. The Court held:

"Under our cases jeopardy had not yet attached when the District Court granted petitioner's motion to dismiss the indictment. Petitioner was not then, nor has he ever been, 'put to trial before the trier of facts.'"

While this Court notes with interest the holding in United States ex rel. DiGiangiemo v. Regan, 528 F.2d 1262 (2nd Cir. 1975) in regard to the collateral estoppel issue, this Court will not prematurely interfere with the judicial administration and process of the State court based only upon the potentiality of a possible constitutional issue.

Petitioners secondly contend that the maintenance of the proceedings below denies petitioners due process of law in that subsequent to the initial dismissal, the Oklahoma Court of Criminal Appeals, by case law, attempted, in State v. Robinson, 544 P.2d 545 (Okla. 1975), to legislate a procedural change. In Robinson, the Court held that subsequent to the dismissal of a case based upon the sustaining of a Motion to Suppress, the case could be refiled and should be assigned to a different district judge who would not be bound by the prior ruling.

Petitioners contend that the procedural due process guarantee of the Constitution requires that they be given fair and adequate notice as to what procedure would be followed throughout the course of their defense. According to petitioners, at the time they planned and executed their defense of the initial charge, the only criminal procedure of which they had been given notice was that found in Title 22 of the Oklahoma statutes and the published Rules of the Court of Criminal Appeals, 22 O.S. Ch. 18 App. Petitioners contend that under such statutes and rules, as construed under case law prior to Robinson, the sustaining of a Motion to Suppress by a District Judge would conclude a pending prosecution. However, 22 O.S. § 815 provides in pertinent part:

"The court may either of its own motion or upon application of the county attorney, and in the furtherance of justice, order an action or indictment to be dismissed;"

In conjunction therewith, 22 O.S. § 817 provides:

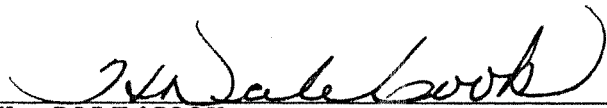
"An order for the dismissal of the action, as provided in this Article, is not a bar to any other prosecution for the same offense."

While it may have been the usual procedure in the District Court of Tulsa County, as contended by petitioners, that "the sustaining of a Motion to Suppress by a District Judge would conclude a pending prosecution," in light of the language in the above-quoted statutes, petitioners should have been on notice of the possible refiling of the action. Merely having the case assigned to a different judge, in and of itself, would not constitute a constitutional denial of due process.

While the legislative opinion of the Oklahoma Court of Criminal Appeals in Robinson may be questionable on other grounds, the petitioners at the present stage of the pending proceedings have not been denied of their constitutional right to procedural due process since the statutes of Oklahoma provide adequate notice of the procedures followed thus far.

It is therefore the determination of the Court that the
Petition for Writ of Habeas Corpus should be, and hereby is,
dismissed.

It is so Ordered this 28th day of September, 1976.



H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 20 1976 *ph*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

W. J. USERY, JR., (Successor to)
John T. Dunlop), Secretary of)
Labor, United States Department)
of Labor,)
)
Plaintiff,)
)
vs.)
)
TUL-TRUK, INC., a corporation,)
and RALPH EDWARD JUDY, an)
individual,)
)
Defendants.)

No. 74-C-429-C ✓

J U D G M E N T

This is an action brought pursuant to the provisions of sections 7, 11(c), 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201, et seq.) (hereinafter, F.L.S.A.) for the collection of overtime compensation alleged to be due to employees under the Act. The Complaint, filed on October 31, 1974, was brought against TUL-TRUK, INC., a corporation; OKLAHOMA TANK LINES, INC. a corporation; RALPH EDWARD JUDY, an individual and KEITH PRICE, an individual. On September 17, 1975 this Court dismissed Oklahoma Tank Lines, Inc. and Keith Price after representations by the plaintiff that these defendants were exempt from the provisions of the Fair Labor Standards Act and that the Secretary did not oppose the dismissal. The plaintiff continued to assert that the Interstate Motor Carrier exemption (29 U.S.C. 213 (b)(1)) did not apply to the defendants Tul-Truk, Inc. and Ralph Edward Judy.

On April 8, 1976, the parties agreed to submit the questions of whether Ralph Edward Judy or Tul-Truk, Inc. was an employer under the Act, whether the truck drivers were exempt from the

provisions of the F.L.S.A. under section 13(b)(1) of the Act (20 U.S.C. § 213(b)(1)), and the amount of the overtime compensation wrongfully withheld.

The parties have stipulated to the facts surrounding the allegations of the Complaint. From the First Supplemental Statement of Facts filed on May 17, 1976, the Court finds the following:

I. Ralph Judy - background and identity.

1.01. Ralph Judy is a resident of Tulsa, Oklahoma, and has so resided at all times involved in this litigation.

1.02. Wilma Judy is his wife and has resided with him at all times involved in this litigation.

1.03. Anita Judy is the daughter of Ralph and Wilma Judy and has resided in Tulsa County at all times involved in this litigation.

II. Oklahoma Tank Lines and Keith Price.

2.01. Keith Price is a resident of Oklahoma County, Oklahoma, and has so resided at all times involved in this litigation.

2.02. Keith Price is the President, Chairman of the Board of Directors and principal stockholder of Oklahoma Tank Lines, Inc.

2.03. Oklahoma Tank Lines, Inc., is an Oklahoma corporation, with principal offices in Oklahoma City.

2.04. The principal business of Oklahoma Tank Lines is that of common carrier.

2.05. Oklahoma Tank Lines, Inc., is the owner of an Oklahoma motor carrier's permit for the purpose of intra-state hauling.

2.06. The principal business of Oklahoma Tank Lines, Inc., from 1966 through 1974 consisted primarily of hauling petroleum products between points in Oklahoma. Oklahoma Tank Lines, Inc. (OTL) did hold itself out available for inter-state hauling and on occasion did haul petroleum products across state lines.

The bulk of OTL activities included the transportation of petroleum products from pipe-line terminals, which products had been

dispatched from points outside Oklahoma. Additionally, OTL transported refined products to the Port of Catoosa where such products were passed into inter-state commerce.

2.07. OTL entered into those standard-form contracts with owner - drivers as recommended by the Oklahoma Motor Carrier's Association. OTL furnished the trailers and the third parties furnished their own tractors. OTL collected the gross revenues kept a portion and distributed the balance to the tractor owners.

III. Initial relationship between OTL and Judy.

3.01. OTL and Judy had no relationship prior to 1966.

3.02. In 1966 OTL entered into the so-called standard-form agreement with Judy for the use of his tractors.

3.03. Prior to 1966 Judy himself had also worked as a truck driver.

3.04. Following the execution of these initial contracts, Judy continued to work as an ordinary driver.

3.05. Under the terms of the agreements, OTL was to furnish all of the trailers for the hauling of oil, gasoline and the other products and Judy would furnish his tractors.

3.06. In the interval in question he has owned as few as two (2) tractors and as many as eight (8).

3.07. The specifics of the agreement were as follows:

- A. Judy would continue as a driver.
- B. Judy would act as dispatcher.
- C. OTL would advertise for business in its own name.
- D. Judy would not advertise in his name.
- E. Judy would solicit business for OTL;
- F. Judy would not solicit business in his own name.
- G. All hauls would be subject to approval by OTL (in its Oklahoma City office).
- H. That OTL held monthly safety meetings in Oklahoma City and required all drivers operating from Tulsa to attend such meetings without pay. This procedure included Judy,

who was likewise required to attend each of such meetings without pay.

I. OTL prescribed the trip report forms to be used by each driver.

J. OTL required Judy to collect the same and deliver them to OTL's office in Oklahoma City.

K. OTL kept all other books and records whatsoever in its Oklahoma City office.

L. OTL fixed the rates and priced the hauls and invoiced the customers.

M. OTL collected the gross revenues from the customers.

N. OTL adjusted all claims for damage, loss or spillage with the customers. In this connection OTL deducted the settlements arbitrated with customers from the gross revenues which had been invoiced. Judy had no authority nor discretion in the determination of any such adjustments.

O. OTL fixed the pay periods for the drivers. OTL varied these from bimonthly to monthly on occasion.

P. OTL determined the type and amounts of insurance coverage to be carried.

Q. OTL purchased such insurance coverage and designated the insureds to include itself and the owners and drivers.

R. OTL furnished credit for the purchase of all fuel for the tractors.

S. OTL determined the number of drivers to be maintained in Tulsa, set the policies on hiring and firing, and instructed Judy on those drivers to be disciplined or fired.

T. OTL required all drivers to communicate all accidents, damages, arrests and similar matters to OTL at Oklahoma City; in this connection OTL - rather than Judy - determined the action to be taken and the instructions to be given to the drivers in such instances.

U. Judy and his wife Wilma Judy were required to be available

by phone to receive orders and dispatch drivers twenty-four (24) hours per day. During the period of their association with Oklahoma Tank Lines, Ralph and Wilma Judy were relieved of this obligation for one week only in the total period of approximately eight (8) years.

V. Judy was given the title of 'Terminal Manager' for this period but was never placed on salary. In effect, Judy acted as Terminal Manager and also as Dispatcher for this interval of eight (8) years and his only compensation consisted of one (1) wages paid to him as a truck driver, or (2) a portion of gross revenues paid to him (or later to Tul-Truk, Inc.) for the use of the tractors.

W. From the gross revenues invoiced and collected by OTL, OTL agreed to disburse such revenues as follows:

- (1) To deduct for OTL 32% of such gross revenues as compensation to OTL for its trailers and for its overhead;

- (2) To deduct from the balance (or the remaining 68% all drivers compensation;

- (3) To deduct from the balance the costs of all liability and insurance premiums;

- (4) To deduct cost of all damage settlement payments;

- (5) and, after deducting the foregoing items, to remit the balance remaining on hand to Judy as compensation for the use of his tractors. Judy was separately compensated by wages for driver labor which he performed and showed on the bi-monthly drivers' report sheets.

- (6) OTL would prepare and deliver checks drawn on its own bank account for compensation to Judy and to the other drivers for their services in each pay period.

IV. Subsequent developments in the OTL - Judy agreement.

- 4.01 In August of 1972, Keith Price contacted Judy and told him in substance that OTL could no longer pay the drivers and suggested that Judy form a corporation and told Judy he would have to make the payroll for all drivers operating in Tulsa.
- 4.02. The new basis started about September 1, 1972. Then or shortly thereafter Judy formed Tul-Truck Inc., an Oklahoma corporation, of which he thereafter functioned as President and as a Director and was the largest shareholder, the rest of the shares being titled in his wife and daughter's.
- 4.03. OTL continued to collect the drivers bi-monthly report sheets on trips as well as all other records including the freight bills, contracts, and the like. Neither Judy nor Tul-Truck, Inc., kept or maintained any of these records.
- 4.04. OTL determined the rates for the hauls, invoiced customers and collected the gross revenues.
- 4.05. OTL continued to handle and place the insurance, designate the insured parties.
- 4.06. OTL continued to settle all claims for spillage, damages, accidents, and the like.
- 4.07. In connection with wages of drivers, OTL continued to make the calculation as to the wages due. The only substantial difference in the conduct of the parties following September 1, 1972, was that OTL at the end of each pay period would telephone Judy or Tul-Truck, Inc., and would read a list of the names of the drivers and of the compensation due to each and of the deductions to be taken therefrom. In this connection, OTL would then transmit a total of such sums to Judy or Tul-Truck, Inc., for disbursement to the drivers.
- 4.08. All business was solicited and contracted for in the name of OTL as before.
- 4.09. All advertising was done in the name of OTL as before.
- 4.10. In 1973 OTL purchased and acquired Bison Transports, Inc.,

which latter company had its offices and its equipment in Tulsa.

4.11. In this connection, OTL directed Judy to move the business telephone and offices earlier maintained in Judy's residence to the new corporate offices and otherwise continue to perform the same services he had theretofore performed.

4.12. Wilma Judy kept the records and did most of the telephone answering in the Tulsa office. OTL paid Wilma Judy a monthly salary for this service while the offices were maintained in the Judy home and when the offices were later moved to corporate premises. At certain intervals Anita Judy performed bookkeeping services and was compensated therefor by OTL.

V. Business Activities of Judy and/or Tul-Truck.

5.01. The hauls by the drivers based in Tulsa included the following:

A. For Williams Bros. Pipeline Company, by picking the same up at its terminal in Tulsa and delivering the same to bulk plants; the products in the pipeline originated outside the State of Oklahoma. This haul was not duplicated by OTL from Oklahoma City.

B. For Conoco Oil Company, by picking the same up from the Conoco pipeline terminal at Glenpool, Oklahoma, and delivering it to bulk plants; this haul was not duplicated by OTL from Oklahoma City.

C. For Conoco Oil Company, by picking products up from the Sun Oil Company Refinery in Tulsa and delivering the same to bulk plants in Miami and Vinita and also in Muskogee. OTL from Oklahoma City also performed the Muskogee haul.

D. For Sun Oil Company, by picking products up from Sun Oil Company Refinery in Tulsa and delivering the same to bulk plants in Sallisaw, Gore, Grove, Vinita, Cushing and Miami. With the exception of Gore, OTL from Oklahoma City also performed the hauls.

E. For Texaco Oil Company by picking products up at the Texaco Refinery in Tulsa and transporting the same to Hugo, McAlester, Poteau, Chelsea and Cushing; OTL from Oklahoma City also performed the Hugo, McAlester and Poteau hauls.

F. For Derby Oil Company, by picking products up from the Sun Oil Company Refinery in Tulsa and delivering the same to McAlester, Henryetta, Okmulgee and Muskogee; OTL from Oklahoma City also performed these hauls.

G. For Bell Oil and Gas Company, by picking products up from the Arco Pipeline Terminal at Sand Springs, Oklahoma, (later known as the Pasco Terminal) and delivering the same to Enid, Drumright, Pryor, Muskogee, Claremore, Tahlequah and McAlester. With the exception only of Claremore, OTL from Oklahoma City also performed these hauls.

H. Transport of fuel oil from O.K.C. Refinery at Okmulgee to Jones Mills Company at Jones Mills, Arkansas, as consignee, in conjunction with Ellex Transportation Company (formerly Breeding Transport Co.). This haul was made periodically and not weekly.

5.02. The Arco Pipeline Terminal (later Pasco Terminal) above described was that pipeline covered by the evidence in the companion case 74-935 in the United States District Court for the Western District of Oklahoma styled Peter J. Brennan, Secretary of Labor, plaintiff, vs. Oklahoma Tank Lines, Inc., a corporation, and Keith Price, defendants, reference being made to the transcript of such proceedings had on July 10, 1975, and to the testimony of the witnesses therein set forth Thomas J. Sullivan and Steven B. McCommas.

From the Pre-Trial Order filed on April 8, 1976, the Court finds the following admitted facts:

(a) During the periods of time involved in this litigation

the persons performing the work made the basis of this action were engaged in transporting and delivering gasoline, kerosene, diesel fuel and other petroleum products from pipeline terminal storage facilities, bulk plants, and refineries within the State of Oklahoma to service stations, bulk plants and consumer accounts, including military defense installations for use in the production of goods for commerce and in connection with the operation of interstate facilities within and without the State of Oklahoma. By reasons thereof, such persons were engaged in closely related processes or occupations directly essential to the production of goods for commerce within the meaning of the Act.

(b) Defendant, Tul-Truk, Inc., is a corporation organized under the laws of the State of Oklahoma.

(c) The officers and directors of defendant, Tul-Truk, Inc., during all times involved in this action were:

Ralph Edward Judy - President

Donna Judy - Vice President

Wilma J. Judy - Secretary/Treasurer

(d) During the periods involved in this action there were a total of 500 shares of corporate stock of defendant, Tul-Truk, Inc., which were owned as follows:

Ralph Edward Judy - 200 shares

Wilma J. Judy - 100 shares

Lisa K. Judy - 100 shares

Anita J. Judy - 100 shares

(e) The amount of money paid to each of the persons claimed to be employees each workweek is not in dispute and will be ascertained as necessary from available pay and other records. The amount of overtime due, if any, may be computed from the hours each workweek that the Court finds that was worked.

(f) Since only a part of September 1972 would be subject to the three year statute of limitations if the violations are found to have been willful, the plaintiff herewith abandons the

allegation of willfulness. Hence, the period for which back wages are claimed begins October 31, 1972.

(g) For purposes of the claimed exemptions, defendants, Tul-Truk, Inc. or Ralph Edward Judy, was either a private carrier of property by motor vehicle or a contract carrier by motor vehicle and that the alleged employees in question were drivers in safety affecting activities within the meaning of the Motor Carrier Act (49 U.S. Code 303, et seq.; 29 CFR 782).

The Court has jurisdiction over this case by virtue of section 17 of the Fair Labor Standards Act (20 U.S.C. § 217). The Court first looks to the question of whether under the facts presented either Ralph Edward Judy or Tul-Truk, Inc. was an employer within the meaning of section 3 of the F.L.S.A. Section 3 contains definitions of terms used in the F.L.S.A. and provides in part:

"

(d) 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee. . . .

(e) 'Employee' includes any individual employed by an employer.

(g) 'Employ' includes to suffer or permit to work.

. . . ."

29 U.S.C. § 203 (June 25, 1938).

Section 7 of the F.L.S.A. provides in part:

"(a)(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed." 20 U.S.C. § 207 (Amended 1966).

Section 11(c) of the F.L.S.A. requires every employer subject to the Act to maintain records work and wage records of his

employees. 29 U.S.C. § 211(c)(1938). Section 15(a)(2) of the F.L.S.A. makes it unlawful to violate § 7 of the Act. 29 U.S.C. § 215(a)(2)(1938). Section 15(a)(5) of the F.L.S.A. makes it unlawful to violate § 11(c) of the Act. 29 U.S.C. § 215(a)(5)(1938).

The term "employer" as defined in § 3 of the F.L.S.A. has been examined by the Supreme Court of the United States in the case of Rutherford Food Corp. v. McComb, 331 U.S. 722, 67 S.Ct. 1473, 91 L.Ed. 1772 (1947), reh. denied 332 U.S. 785 (1947). The McComb Court found that the definition of "employ" is broad and concluded that meat boners who were supervised, hired and controlled by a boner contractor, who owned their own tools and whose hours were not controlled by the owner of the slaughterhouse, were employees of the slaughterhouse owner and were not independent contractors. The Court stated:

"We think, however, that the determination of the relationship does not depend on such isolated factors but rather upon the circumstances of the whole activity. Viewed in this way, the workers did a specialty job on the production line. The responsibility under the boning contracts without material changes passed from one boner to another. The premises and equipment of Kaiser were used for the work. The group had no business organization that could or did shift as a unit from one slaughterhouse to another. The managing official of the plant kept close touch on the operation. While profits to the boners depended upon the efficiency of their work, it was more like piecework than an enterprise that actually depended for success upon the initiative, judgment or foresight of the typical independent contractor. Upon the whole, we must conclude that these meat boners were employees of the slaughtering plant under the Fair Labor Standards Act. McComb, 331 U.S. at 730.

In Shultz v. Mistletoe Express Service, Inc., 434 F.2d 1267 (10th Cir. 1970) the United States Court of Appeals for the Tenth Circuit held that "the determination of whether a worker is an employee within the F.L.S.A. depends on the overall situation rather than on isolated circumstances." Shultz at 1271. The facts in Shultz show that Mistletoe Express Service, Inc. maintained freight terminals in Oklahoma and neighboring states.

Mistletoe trucks handled shipments to and from the terminals and terminal operators made local deliveries and pickups. An "Agent's Contract" was entered into between the operator at each terminal and Mistletoe wherein the operator was designated as an independent contractor. Mistletoe owned and supplied the buildings, offices, docks office equipment and supplies, records and other equipment. Mistletoe paid utility bills.

"The operators furnished the locally used trucks and hired and fired the local employees." Shultz at 1270. Mistletoe processed the compensation paid to the operators and made the necessary deductions. Mistletoe furnished operation manuals which regulated the day to day activities of the terminals. The Shultz court found that the terminal operators and employees of terminal operators were not independent contractors and came within the definition of "employee" under the F.L.S.A. even though the operators furnished local trucks, hired and fired local workers and complied with the regulations of federal and state agencies.

In determining whether a person was an employer under the F.L.S.A. the Tenth Circuit looked to the overall situation rather than on isolated circumstances.

"The case at bar is more like Western Union Tel. Co. v. McComb, 6 Cir. 165 F.2d 65, cert. denied 333 U.S. 862, 68 S.Ct. 743, 92 L.Ed. 1141 (personnel in agency offices of a telegraph company), Burry v. National Trailer Convoy, Inc., 6 Cir., 338 F.2d 422 (workers in terminal of a transporter of house trailers), Schultz v. Cadillac Associates, Inc., 7 Cir., 413 F.2d 1215 (employment counsellors serving employment agencies), and Mitchell v. Railway Express Agency, D.C. Me., 160 F.Supp. 628 ("merchant agents" of railway express firm). As we read those decisions the determination of whether a worker is an employee within FLSA depends on the overall situation rather than on isolated circumstances." Shultz at 1271.

In examining the facts as stipulated in this case the Court takes particular note that in 1966 Oklahoma Tank Lines, Inc. (OTL) contracted with Ralph Edward Judy for the use of his tractors. The initial relationship between Judy and OTL lasted

from 1966 to August of 1972. Under this arrangement Judy was a driver and acted as a dispatcher for OTL and was given the title of "Terminal Manager." Judy was paid as a truck driver and received a portion of the gross revenues for the use of his tractors. During the period from 1966 to 1972 OTL furnished all trailers for the tractors which OTL had leased from Judy, advertized under the name of Oklahoma Tank Lines and prohibited Judy from advertizing under his name, approved all hauls, conducted mandatory safety meetings, prescribed trip report forms and reviewed them, kept all books and records, fixed rates and invoiced the customers, collected the gross revenues, adjusted all damage claims and the like, fixed driver pay periods, determined type and amounts of insurance and purchased the coverage, furnished credit to purchase all the fuel used in the tractors, set the policies on hiring and firing, instructed Judy on the drivers to be disciplined or fired and required all drivers to report accidents and arrests to it and dictated the action to be taken.

In August of 1972, Keith Price on behalf of OTL contacted Judy and suggested that Judy form a corporation for the purpose of making the payroll for all drivers operating in Tulsa. Judy formed Tul-Truk, Inc. and the changes become effective September 1, 1972. Subsequent to this day all activities remained the same except that at the end of each pay period OTL telephoned Judy or Tul-Truk, Inc. and read the names of the drivers and the compensation due to each after deductions. OTL transmitted a total of the amounts due to the drivers to Judy or Tul-Truk, Inc. for disbursement.

The Court has placed emphasis on the above facts but has not overlooked the remaining admitted facts. The Court has considered the arguments and legal authorities submitted by the parties. In considering all of the facts presented it is the conclusion of the Court that neither Ralph Edward Judy nor Tul-Truk, Inc. was an employer as defined under the F.L.S.A. and

interpreted in the cases cited herein. The only act which appears to have been performed by these defendants was to distribute the money paid by OTL to the drivers. Under these facts the defendants had no authority to "suffer or permit" any of the drivers to work. The interest of OTL is the payment of money due to the drivers. The defendants here may be said to be acting in the interest of OTL by serving as a vehicle for the distribution of the money due to the drivers. Yet the facts show that these defendants were no more than a vehicle for OTL and could in no way affect the amount, terms, conditions or fact of employment. While the Court recognizes that the definition of "employer" under the F.L.S.A. is broad, to find under these facts that Ralph Edward Judy or Tul-Truk, Inc. was an "employer" would be to stretch the concept beyond limitation.

The parties have raised the question of whether these truck drivers were exempt from the provision of the F.L.S.A. by section 13(b)(1) of the Act. While there is ample evidence to support a finding that these drivers are controlled by the Interstate Commerce Act, (49 U.S.C. § 301 et seq.), in view of a finding that these defendants are not employers under the F.L.S.A. there is no need for the Court to rule on the question of exemption.

Accordingly:

IT IS ORDERED ADJUDGED AND DECREED that judgment on the Complaint be entered in favor of the defendants, Tul-Truk, Inc., a corporation, and Ralph Edward Judy, an individual, and against the plaintiff, W. J. Usery, Jr., (Successor to John T. Dunlop), Secretary of Labor, United States Department of Labor, this 27th day of September, 1976.


H. DALE COOK

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SHIRLEY ANN VINSON,

Plaintiff

vs.

REBA J. JAMES,

Defendant

No. 76-C-152

ORDER

And now on this 27th day of September, 1976,
there came on before the undersigned Judge of the District
Court for the Northern District of Oklahoma the parties'
Motion to dismiss the above entitled cause with prejudice,
it being shown to the Court that all matters between the
parties have been resolved and settled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that
the causes of action on behalf of both the plaintiff and
defendant are hereby dismissed with prejudice to the rights
of bringing of future action.

Allen E. Brown

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

Jack C. Fisher, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 74-C-72
)	
vs.	)	Tract No. 509ME
)	
152.29 Acres of Land, More or	)	All Interests Except Oil
Less, Situate in Osage County,	)	Leasehold Interest
State of Oklahoma, and Osage)	
Tribe of Indians,)	
)	
Defendants.	)	(Included in D.T. Filed in Master File 401-1)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to all interests except the oil leasehold interest in the estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant

thereto, on January 29, 1974, the United States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation; and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority

to condemn for public use the property particularly described in the Complaint filed herein; and all interests except the oil leasehold interest in such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of January 29, 1974, and the defendant herein and all other persons claiming any interest in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

TRACT NO. 509ME

(All interests except the oil leasehold interest)

OWNER: Osage Tribe of Indians

Award of just compensation		
pursuant to Stipulation -----	\$81,737.99	\$81,737.99

Deposited as estimated		
compensation -----	7,462.00	

Disbursed to owner -----		<u>None</u>
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Balance due to owner -----		\$81,737.99
----------------------------	--	-------------

Deposit deficiency -----	\$74,275.99	
--------------------------	-------------	--

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this

Court, in this civil action, to the credit of subject property, the deficiency sum of \$74,275.99, and the Clerk of this Court then shall disburse from the deposit for subject tract, to the Osage Tribe of Indians the sum of \$81,737.99.

UNITED STATES DISTRICT JUDGE

APPROVED:

Hubert A. Marlow
HUBERT A. MARLOW
Assistant United States Attorney

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 27 1976

John C. Cover, Clerk
U.S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 74-C-74
)	
vs.	)	Tracts Nos. 512ME-1,
	)	512ME-2 and 512ME-3
156.00 Acres of Land, More or)	
Less, Situate in Osage County,	)	(All Interests)
State of Oklahoma, and Osage)	
Tribe of Indians,)	
	)	(Included in D.T. filed
Defendants.	)	in Master File 401-1)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on January 29, 1974, the United

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 67,848.91 \$ 67,848.91

Deposited as estimated
compensation ----- \$ 7,320.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 67,848.91

Deposit deficiency ----- \$ 60,528.91

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 60,528.91, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 67,848.91.

Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)	
)	
Plaintiff,)	
	)	CIVIL ACTION NO. 74-C-73
vs.)	
)	
133.00 Acres of Land, More or	)	Tracts Nos. 511ME-1
Less, Situate in Osage County,	)	and 511ME-2
State of Oklahoma, and Osage)	
Tribe of Indians,	)	(All Interests)
)	
	)	(Included in D.T. filed
Defendants.	)	in Master File 401-1)

FILED

SEP 27 1976

Jack C. Silver, Clerk
DISTRICT COURT

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on January 29, 1974, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of January 29, 1974, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

13
OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 79,664.25 \$ 79,664.25

Deposited as estimated
compensation ----- \$ 4,429.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 79,664.25

Deposit deficiency ----- \$ 75,235.25

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 75,235.25, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 79,664.25.

Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

United States of America,)
)
Plaintiff,) CIVIL ACTION NO. 74-C-69)
)
vs.) Tracts Nos. 508ME-1,)
) 508ME-2 and 508ME-3)
)
125.81 Acres of Land, More or)
Less, Situate in Osage County,) (All interests except oil)
State of Oklahoma, and Osage) leasehold and gas leasehold)
Tribe of Indians,) interest)
) (Included in D.T. filed)
Defendants.) in Master File 401-1)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on January 29, 1974, the United

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of January 29, 1974, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

69 . . .
OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 47,095.13 \$ 47,095.13

Deposited as estimated
compensation ----- \$ 4,914.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 47,095.13

Deposit deficiency ----- \$ 42,181.13

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 42,181.13 and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 47,095.13.

Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 74-C-66
)	
vs.	)	Tract No. 507ME
)	
160.00 Acres of Land, More or	)	(All interests except oil
Less, Situate in Osage County,	)	leasehold and gas leasehold
State of Oklahoma, and Osage	)	interests)
Tribe of INdians,)	
	)	(Included in D.T. filed
Defendants.	)	in Master File 401-1)

FILED

SEP 27 1976

Jack C. Silver, Clerk
U.S. DISTRICT COURT

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on January 29, 1974, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of January 29, 1974, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation pursuant to Stipulation -----	\$ 95,631.57	\$ 95,631.57
Deposited as estimated compensation -----	\$ 6,240.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$ 95,631.57
Deposit deficiency -----	\$ 89,391.57	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 89,391.57, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 95,631.57.

Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

United States of America,)
)
Plaintiff,)
)
vs.)
)
152.14 Acres of Land, More or)
Less, Situate in Osage County,)
State of Oklahoma, and Osage)
Tribe of Indians,)
)
Defendants.)

Jack G. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 74-C-65

Tract No. 506ME

(All Interests)

(Included in D.T. filed
in Master File 401-1)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on January 29, 1974, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of January 29, 1974, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation pursuant to Stipulation -----	\$ 29,894.31	\$ 29,894.31
Deposited as estimated compensation -----	\$ 7,455.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$ 29,894.31
Deposit deficiency -----	\$22,439.31	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 22,439.31 and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 29,894.31.

Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 74-C-64
)	
151.64 Acres of Land, More or	)	Tract No. 504ME
Less, Situate in Osage County,)	
State of Oklahoma, and Osage	)	(All Interests)
Tribe of Indians,)	
	)	(Included in D.T. filed
Defendants.	)	in Master File 401-1)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on January 29, 1974, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of January 29, 1974, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 12,154.38 \$ 12,154.38

Deposited as estimated
compensation ----- \$ 5,156.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 12,154.38

Deposit deficiency ----- \$ 6,998.38

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 6,998.38, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 12,154.38.

Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 27 1976

Jack G. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 74-C-61
)	
vs.	)	Tract No. 503ME
)	
160.00 Acres of Land, More or	)	(All interests except oil
Less, Situate in Osage County,	)	leasehold and gas leasehold
State of Oklahoma, and Osage	)	interests)
Tribe of Indians,)	
	)	(Included in D.T. filed
Defendants.	)	in Master File 401-1)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on January 29, 1974, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 75,666.71 \$ 75,666.71

Deposited as estimated
compensation ----- \$ 6,240.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 75,666.71

Deposit deficiency ----- \$ 69,426.71

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 69,426.71, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$75,666.71.

Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-325
)	
vs.	)	Applies to all interests in
	)	estate taken in:
0.35 Acre of Land, More or)	
Less, Situate in Osage County,	)	Tract No. 615ME
State of Oklahoma, and Osage)	
Tribe of Indians,	)	<u>Except:</u> The oil leasehold
	)	interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 100.00 \$ 100.00

Deposited as estimated
compensation ----- \$ 50.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 100.00

Deposit deficiency ----- \$ 50.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 50.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 100.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 27 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-324
)	
vs.	)	Applies to all interests in
	)	estate taken in:
13.75 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tracts Nos. 614ME-1 and
State of Oklahoma, and Osage	)	614ME-2
Tribe of Indians,)	
	)	Except: The oil leasehold
	)	interest
)	
Defendants.	)	(Included in D.T. filed in
	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 750.00 \$ 750.00

Deposited as estimated
compensation ----- \$ 329.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 750.00

Deposit deficiency ----- \$ 421.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 421.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 750.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 27 1976

Jack G. Smith, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-323
)	
vs.	)	Applies to all interests in
	)	estate taken in:
56.30 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tract No. 613ME
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Except: The oil leasehold
	)	Interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$10,000.00 \$10,000.00

Deposited as estimated
compensation ----- \$ 6,500.00

Disbursed to owner ----- None

Balance due to owner ----- \$10,000.00

Deposit deficiency ----- \$ 3,500.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$3,500.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$10,000.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 27 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-322
)	
vs.	)	Applies to all interests in
	)	estate taken in:
12.45 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tract No. 612ME
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Except: The oil leasehold
	)	interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 500.00 \$ 500.00

Deposited as estimated
compensation ----- \$ 299.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 500.00

Deposit deficiency ----- \$ 201.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 201.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 500.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 27 1976
Jack G. Smith, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-321
)	
vs.	)	Applies to all interests in
	)	estate taken in:
37.05 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tract No. 611ME
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Except: The oil leasehold
	)	interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 979.00 \$ 979.00

Deposited as estimated
compensation ----- \$ 516.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 979.00

Deposit deficiency ----- \$ 463.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 463.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 979.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 27 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-320
)	
vs.	)	Applies to all interests in
	)	estate taken in:
17.80 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tracts Nos. 607ME-1 and
State of Oklahoma, and Osage	)	607ME-2
Tribe of Indians,)	
	)	Except: The oil and gas
	)	leasehold interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 979.00 \$ 979.00

Deposited as estimated
compensation ----- \$ 516.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 979.00

Deposit deficiency ----- \$ 463.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 463.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 979.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-319
)	
vs.	)	Applies to all interests in
	)	estate taken in:
6.90 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tract No. 604ME
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Except: The oil and gas
	)	leasehold interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 379.50 \$ 379.50

Deposited as estimated
compensation ----- \$ 200.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 379.50

Deposit deficiency ----- \$ 179.50

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 179.50, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 379.50.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

Jack G. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-318
)	
vs.	)	Applies to all interests in
	)	estate taken in:
4.15 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tract No. 601ME
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Except: The oil leasehold
	)	interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 228.25 \$ 228.25

Deposited as estimated
compensation ----- \$ 120.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 228.25

Deposit deficiency ----- \$ 108.25

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 108.25, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 228.25.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 27 1976

Jack S. Stryker, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-317
)	
vs.	)	Applies to all interests in
	)	estate taken in:
3.10 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tract No. 526ME
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Except: The oil leasehold
	)	interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 100.00 \$ 100.00

Deposited as estimated
compensation ----- \$ 50.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 100.00

Deposit deficiency ----- \$ 50.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 50.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 100.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 27 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-316
)	
vs.	)	Applies to all interests in
	)	estate taken in:
25.00 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tract No. 427ME
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Except: The oil leasehold
	)	Interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation pursuant to Stipulation -----	\$ 1,200.00	\$ 1,200.00
Deposited as estimated compensation -----	\$ 600.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$ 1,200.00
Deposit deficiency -----	\$ 600.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 600.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 1,200.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 27 1976

Jack G. Story, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-315
)	
vs.	)	Applies to all interests in
	)	estate taken in:
9.70 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tracts Nos. 422ME-1 and
State of Oklahoma, and Osage	)	422ME-2
Tribe of Indians,)	
	)	<u>Except:</u> The oil and gas
	)	leasehold interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

365.
OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 727.50 \$ 727.50

Deposited as estimated
compensation ----- \$ 475.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 727.50

Deposit deficiency ----- \$ 252.50

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 252.50, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 727.50.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 27 1976
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-314
)	
vs.	)	Applies to all interests in
	)	estate taken in:
24.20 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tracts Nos. 421ME-1 and
State of Oklahoma, and Osage	)	421ME-2
Tribe of Indians,)	
	)	<u>Except:</u> The oil and gas
	)	leasehold interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 2,500.00 \$ 2,500.00

Deposited as estimated
compensation ----- \$ 1,200.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 2,500.00

Deposit deficiency ----- \$ 1,300.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$1,300.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 2,500.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 27 1976
Jack G. Silver, Clerk
U. S. District Court

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-313
)	
vs.	)	Applies to all interests in
	)	estate taken in:
14.00 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tract No. 423ME
State of Oklahoma, and Osage)	
Tribe of Indians,	)	<u>Except:</u> The oil leasehold
	)	interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use

the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1974, the United States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a surplus in the amount deposited as estimated compensation for subject property and the amount of such surplus should be refunded to the Plaintiff. Calculation of such surplus is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Deposited as estimated
compensation ----- \$1,114.00

Award of just compensation
pursuant to Stipulation ---- \$1,100.00 \$1,100.00

Disbursed to owner ----- None

Balance due to owner ----- \$1,100.00

Deposit surplus ----- \$ 14.00

13.

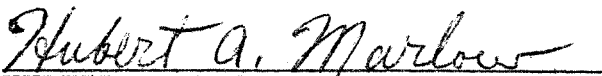
It Is Further ORDERED, ADJUDGED and DECREED that the Clerk of this Court shall disburse the deposit for subject property as follows:

To: Osage Tribe of Indians the sum of \$1,100.00

To: Treasurer of the United States -- \$14.00

UNITED STATES DISTRICT JUDGE

APPROVED:


HUBERT A. MARLOW
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 27 1976
Jack G. Smith, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-312
)	
vs.	)	Applies to all interests in
	)	estate taken in:
9.35 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tracts Nos. 419ME-1,
State of Oklahoma, and Osage	)	419ME-2 and 419ME-3
Tribe of Indians,)	
	)	Except: The oil leasehold
	)	interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$500.00 \$ 500.00

Deposited as estimated
compensation ----- \$271.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 500.00

Deposit deficiency ----- \$229.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 229.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 500.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 27 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-311
)	
vs.	)	Applies to all interests in
	)	estate taken in:
0.60 Acre of Land, More or)	
Less, Situate in Osage County,	)	Tract No. 418ME
State of Oklahoma, and Osage)	
Tribe of Indians,	)	<u>Except:</u> The oil leasehold
	)	interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation pursuant to Stipulation -----	\$ 100.00	\$ 100.00
Deposited as estimated compensation -----	\$ 50.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$ 100.00
Deposit deficiency -----	\$ 50.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 50.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 100.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E

SEP 27 1976

Jack C. ...
...

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-310
)	
vs.	)	Applies to all interests in
	)	estate taken in:
36.30 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tracts Nos. 616ME-1 and
State of Oklahoma, and Osage	)	616ME-2
Tribe of Indians,)	
	)	Except: The oil leasehold
	)	interest and gas leasehold
	)	interest
)	
Defendants.	)	(Included in D.T. filed in
	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation pursuant to Stipulation -----	\$ 3,000.00	\$ 3,000.00
Deposited as estimated compensation -----	\$ 1,416.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$ 3,000.00
Deposit deficiency -----	\$ 1,584.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 1,584.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 3,000.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 27 1976

Jack C. Smith
Clerk

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-309
)	
vs.	)	Applies to all interests in
	)	estate taken in:
70.50 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tracts Nos. 413ME-1,
State of Oklahoma, and Osage	)	413ME-2 and 413ME-3
Tribe of Indians,)	
	)	Except: The oil leasehold
	)	interest and gas leasehold
	)	interest
)	
Defendants.	)	(Included in D.T. filed in
	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation pursuant to Stipulation -----	\$ 7,500.00	\$ 7,500.00
Deposited as estimated compensation -----	\$ 3,788.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$ 7,500.00
Deposit deficiency -----	\$ 3,712.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 3,712.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 7,500.00.

H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

E I E
SEP 27 1976
Jack C. S.

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-308
)	
vs.	)	Applies to all interests in
	)	estate taken in:
95.60 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tracts Nos. 409ME-1,
State of Oklahoma, and Osage	)	409ME-2 and 409ME-3
Tribe of Indians,)	
	)	Except: The oil leasehold
	)	interest and gas leasehold
	)	interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master file #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 7,500.00 \$ 7,500.00

Deposited as estimated
compensation ----- \$ 3,787.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 7,500.00

Deposit deficiency ----- \$ 3,713.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 3,713.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 7,500.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E
SEP 27 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-307
)	
vs.	)	Applies to all interests in
	)	estate taken in:
13.25 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tracts Nos. 408ME-1,
State of Oklahoma, and Osage	)	408ME-2 and 408ME-3
Tribe of Indians,)	
	)	Except: The oil leasehold
	)	interest and gas leasehold
	)	interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 7,500.00 \$ 7,500.00

Deposited as estimated
compensation ----- \$ 3,788.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 7,500.00

Deposit deficiency ----- \$ 3,712.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 3,712.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 7,500.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

E I L L
SEP 27 1976
Jack C. Smith
Clerk of Court

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-306
)	
vs.	)	Applies to all interests in
	)	estate taken in:
115.00 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tract No. 407ME
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Except: The Oil leasehold
	)	interest and Gas Leasehold
	)	interest
)	
	)	(Included in D.T. Filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation pursuant to Stipulation -----	\$ 7,500.00	\$ 7,500.00
Deposited as estimated compensation -----	\$ 3,787.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$ 7,500.00
Deposit deficiency -----	\$ 3,713.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 3,713.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 7,500.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE

SEP 27 1976

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76- C-305
)	
vs.	)	Applies to all interests in
	)	estate taken in:
92.00 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tract No. 404ME
State of Oklahoma, and Osage)	
Tribe of Indians,	)	<u>Except:</u> The Oil Leasehold
	)	interest
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation pursuant to Stipulation -----	\$ 5,060.00	\$ 5,060.00
Deposited as estimated compensation -----	\$ 2,668.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$ 5,060.00
Deposit deficiency -----	\$ 2,392.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 2,392.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 5,060.00.

H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L L

SEP 27 1976

Jack C. Siler, Clerk
U.S. District Court

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-304
)	
vs.	)	Applies to all interests in
	)	estate taken in:
75.00 Acres, More or Less,)	
Less, Situate in Osage County,	)	Tract No. 403ME
State of Oklahoma, and Osage)	
Tribe of Indians,	)	<u>Except:</u> The Oil Leasehold
	)	interest
)	
Defendants.	)	(Included in D.T. filed in
	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$9,375.00 \$ 9,375.00

Deposited as estimated
compensation ----- \$4,425.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 9,375.00

Deposit deficiency ----- \$4,950.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 4,950.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 9,375.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE
SEP 27 1976

Jack C. Smith, Clerk

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 76-C-303
)	
vs.	)	Applies to all interests in
	)	estate taken in:
2.95 Acres of Land, More or)	
Less, Situate in Osage County,	)	Tracts Nos. 401ME-1 and
State of Oklahoma, and Osage	)	401ME-2
Tribe of Indians,)	
	)	<u>Except:</u> Oil leasehold inter-
	)	est and Gas leasehold interest
)	
Defendants.	)	(Included in D.T. filed in
	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 162.25 \$ 162.25

Deposited as estimated
compensation ----- \$ 50.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 162.25

Deposit deficiency ----- \$ 112.25

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$112.25, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$162.25.

H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-302
)	
24.20 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tracts Nos. 609ME-1, 609ME-2,
	)	and 609ME-3
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation pursuant to Stipulation -----	\$ 1,331.00	\$ 1,331.00
Deposited as estimated compensation -----	\$ 702.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$ 1,331.00
Deposit deficiency -----	\$ 629.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 629.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 1,331.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-301
)	
20.70 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tracts Nos. 608ME-1 and
	)	608ME-2
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 1,138.50 \$ 1,138.50

Deposited as estimated
compensation ----- \$ 600.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 1,138.50

Deposit deficiency ----- \$ 538.50

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 538.50, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 1,138.50.

H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

Jack C. Silver, Clerk
U.S. DISTRICT COURT

United States of America,
Plaintiff,

vs.

9.70 Acres of Land, More or
Less, Situate in Osage County,
State of Oklahoma, and Osage
Tribe of Indians,

Defendants.

CIVIL ACTION NO. 76-C-300

Applies to all interests in
estate taken in:

Tracts Nos. 606ME-1 and
606ME-2

(Included in D.T. filed in
Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 533.50 \$ 533.50

Deposited as estimated
compensation ----- \$ 281.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 533.50

Deposit deficiency ----- \$ 252.50

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 252.50, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 533.50.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 27 1976

Jack C. Silver, Clerk
DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-299
)	
9.40 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tracts Nos. 603ME-1 & 603ME-2
)	
	)	Included in D.T. filed in
Defendants.	)	Master File #401-2

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 517.00 \$ 517.00

Deposited as estimated
compensation ----- \$ 273.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 517.00

Deposit deficiency ----- \$ 244.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 244.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 517.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 27 1976
Jack C. Silver, Clerk
DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-298
)	
7.60 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 602ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 418.00 \$ 418.00

Deposited as estimated
compensation ----- \$ 220.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 418.00

Deposit deficiency ----- \$ 198.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 198.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 418.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

Jack C. Silver, Clerk
DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-297
)	
53.25 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 524ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 2,928.75 \$ 2,928.75

Deposited as estimated
compensation ----- \$ 1,516.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 2,928.75

Deposit deficiency ----- \$ 1,412.75

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 1,412.75, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 2,928.75.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 27 1976
Jack C. Silver, Clerk
DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-296
)	
22.50 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 523ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 1,237.50 \$ 1,237.50

Deposited as estimated
compensation ----- \$ 1,102.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 1,237.50

Deposit deficiency ----- \$ 135.50

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 135.50, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 1,237.50.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

Jack C. Silver, Clerk
DISTRICT COURT

United States of America,)
)
Plaintiff,)
)
vs.)
)
58.75 Acres of Land, More or)
Less, Situate in Osage County,)
State of Oklahoma, and Osage)
Tribe of Indians,)
)
)
Defendants.)

CIVIL ACTION NO. 76-C-295

Applies to all interests in
estate taken in:

Tract No. 522ME

(Included in D.T. filed in
Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

295
OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 3,231.25 \$ 3,231.25

Deposited as estimated
compensation ----- \$ 1,703.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 3,231.25

Deposit deficiency ----- \$ 1,528.25

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 1,528.25, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 3,231.25.

H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

Jack C. Silver, Clerk
DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-294
)	
111.50 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 521ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation pursuant to Stipulation -----	\$ 6,132.50	\$ 6,132.50
Deposited as estimated compensation -----	\$ 3,233.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$ 6,132.50
Deposit deficiency -----	\$ 2,899.50	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 2,899.50, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 6,132.50.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1976

Jack C. Silver, Clerk
DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-293
)	
92.75 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 519ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 5,101.25 \$ 5,101.25

Deposited as estimated
compensation ----- \$ 2,689.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 5,101.25

Deposit deficiency ----- \$ 2,412.25

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 2,412.25, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 5,101.25.

H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

E I L E

SEP 27 1976

Jack C. Silver, Clerk
U.S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-292
)	
97.75 Acres of Land, More or	)	Applies to all interests
Less, Situate in Osage County,	)	in estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tracts Nos. 518ME-1,
	)	518ME-2 & 518ME-3
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File 401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 5,376.25 \$ 5,376.25

Deposited as estimated
compensation ----- \$ 2,834.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 5,376.25

Deposit deficiency ----- \$ 2,542.25

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 2,542.25, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 5,376.25.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 27 1976

Jack C. Silber, Clerk

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-291
)	
30.25 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 517ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation pursuant to Stipulation -----	\$ 1,663.75	\$ 1,663.75
Deposited as estimated compensation -----	\$ 877.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$ 1,663.75
Deposit deficiency -----	\$ 786.75	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 786.75, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 1,663.75.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE

SEP 27 1976

Jack C. Silver, Clerk
U.S. District Court

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-290
)	
27.75 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tracts Nos. 516ME-1 and
	)	516ME-2
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 1,526.25 \$ 1,526.25

Deposited as estimated
compensation ----- \$ 804.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 1,526.25

Deposit deficiency ----- \$ 722.25

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 722.25, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 1,526.25.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE
SEP 27 1976
Jack C. Silver, Clerk
U.S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-289
)	
64.75 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tracts Nos. 514ME-1 and
	)	514ME-2
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 3,561.25 \$ 3,561.25

Deposited as estimated
compensation ----- \$ 1,877.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 3,561.25

Deposit deficiency ----- \$ 1,684.25

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 1,684.25, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 3,561.25.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE

SEP 27 1976

Jack C. Silver, Esq.
Attorney at Law

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-288
)	
15.25 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 432ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 838.75 \$ 838.75

Deposited as estimated
compensation ----- \$ 442.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 838.75

Deposit deficiency ----- \$ 396.75

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 396.75, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 838.75.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE

SEP 27 1976

Jack C. Silver, Clerk
U.S. District Court

United States of America,)
)
Plaintiff,)
)
vs.)
)
6.55 Acres of Land, More or)
Less, Situate in Osage County,)
State of Oklahoma, and Osage)
Tribe of Indians,)
)
)
Defendants.)

CIVIL ACTION NO. 76-C-287

Applies to all interests in
estate taken in:

Tract No. 431E

(Included in D.T. filed in
Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 360.25 \$ 360.25

Deposited as estimated
compensation ----- \$ 189.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 360.25

Deposit deficiency ----- \$ 171.25

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 171.25, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 360.25.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE
SEP 27 1976
Jack C. Silver

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-286
)	
37.50 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 429ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 2,062.50 \$ 2,062.50

Deposited as estimated
compensation ----- \$ 1,087.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 2,062.50

Deposit deficiency ----- \$ 975.50

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 975.50, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 2,062.50.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE
SEP 27 1976

Jack C. Silver, Clerk
U.S. District Court

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-285
)	
18.00 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tracts Nos. 428ME-1 and
	)	428ME-2
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 990.00 \$ 990.00

Deposited as estimated
compensation ----- \$ 522.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 990.00

Deposit deficiency ----- \$ 468.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 468.00 and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 990.00.

H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

E I L E

SEP 27 1976

Jack C. Silva, CL.
C. DISTRICT OF

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-284
)	
1.60 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tracts Nos. 426ME-1 and
	)	426ME-2
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 88.00 \$ 88.00

Deposited as estimated
compensation ----- \$ 50.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 88.00

Deposit deficiency ----- \$ 38.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 38.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 88.00.

H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE
SEP 27 1976

Jack C. Silver, Clerk
U.S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-283
)	
68.00 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 424ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 3,740.00 \$ 3,740.00

Deposited as estimated
compensation ----- \$ 1,972.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 3,740.00

Deposit deficiency ----- \$ 1,768.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 1,768.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 3,740.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE

SEP 27 1976

Jack C. Silver, Clerk
U.S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-282
)	
46.00 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 416ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 2,534.00 \$ 2,534.00

Deposited as estimated
compensation ----- \$ 1,334.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 2,534.00

Deposit deficiency ----- \$ 1,200.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 1,200.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 2,534.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

E I L E

SEP 27 1976

Jack C. Silver, U.S.
C. DISTRICT C.

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-281
)	
74.00 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 414ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 4,070.00 \$ 4,070.00

Deposited as estimated
compensation ----- \$ 2,146.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 4,070.00

Deposit deficiency ----- \$ 1,924.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 1,924.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 4,070.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE

SEP 27 1976

Jack C. Silver, Clerk
U.S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-280
)	
121.00 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 412ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 6,655.00 \$ 6,655.00

Deposited as estimated
compensation ----- \$ 3,509.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 6,655.00

Deposit deficiency ----- \$ 3,146.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 3,146.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 6,655.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE

SEP 27 1976

Jack C. Silver, Clerk
U.S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO.76-C-279
)	
88.00 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 411ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE

SEP 27 1976

Jack C. Silver, Clerk
U.S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO.76-C-279
)	
88.00 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 411ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 4,840.00 \$ 4,840.00

Deposited as estimated
compensation ----- \$ 2,552.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 4,840.00

Deposit deficiency ----- \$ 2,288.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 2,288.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 4,840.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE

SEP 27 1976

Jack C. Silver, Clerk
U.S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 76-C-278
)	
63.00 Acres of Land, More or	)	Applies to all interests in
Less, Situate in Osage County,	)	estate taken in:
State of Oklahoma, and Osage)	
Tribe of Indians,	)	Tract No. 406ME
)	
	)	(Included in D.T. filed in
Defendants.	)	Master File 401-2)

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 3,465.00 \$ 3,465.00

Deposited as estimated
compensation ----- \$ 1,827.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 3,465.00

Deposit deficiency ----- \$ 1,638.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 1,638.00, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 3,465.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE

SEP 27 1976

Jack C. Silver, Cler.
U.S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,)	
	)	CIVIL ACTION NO. 76-C-277
vs.)	
	)	(Master File No. 401-2)
25.15 Acres of Land, More or)	
Less, Situate in Osage County,	)	Applies to all interests in
State of Oklahoma, and Osage	)	estate taken in:
Tribe of Indians,)	
	)	Tracts Nos. 402ME-1 and
Defendants.	)	402ME-2

J U D G M E N T

1.

This matter came on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in the property listed in the caption hereof, as such estate and property are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on the party defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the described estate in the property described in said Complaint. Pursuant thereto, on June 24, 1976, the United

States of America filed its Declaration of Taking of such estate in such described property, and title thereto should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the taking of the subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation;

and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and the defendant herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the property described above in paragraph 2 was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property as follows:

OWNER: OSAGE TRIBE OF INDIANS

Award of just compensation
pursuant to Stipulation ----- \$ 1,383.25 \$ 1,383.25

Deposited as estimated
compensation ----- \$ 729.00

Disbursed to owner ----- None

Balance due to owner ----- \$ 1,383.25

Deposit deficiency ----- \$ 654.25

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this civil action, to the credit of subject property, the deficiency sum of \$ 654.25, and the Clerk of this Court then shall disburse from the deposit for subject property, to the Osage Tribe of Indians the sum of \$ 1,383.25.

H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
HUBERT A. MARLOW
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-v-

FRANCIS M. LEAF,
KATHERINE MARY LEAF, A/K/A KATHY LEAF,
DELBERT BOWERS D/B/A BUTCH'S GARAGE,
MARIE SMITH D/B/A KIDDIELAND DAY CARE CENTER,
COUNTY TREASURER, CRAIG COUNTY,
BOARD OF COUNTY COMMISSIONERS, CRAIG COUNTY,
J.C. PENNEY CO., A CORPORATION,

Defendants.

FILED

SEP 24 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Civil Action No.

76-C-359 B

JUDGMENT OF FORECLOSURE

THIS MATTER comes on for consideration this 24th day of September, 1976, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the defendants Board of County Commissioners, Craig County, and County Treasurer, Craig County, appearing by Larry D. Stuart, Assistant District Attorney, Craig County, Oklahoma; and the defendants Francis M. Leaf, Katherine Mary Leaf, a/k/a Kathy Leaf; Delbert Bowers d/b/a Butch's Garage; Marie Smith d/b/a Kiddieland Day Care Center; and J.C. Penney Co., a corporation, appearing not.

The Court, being fully advised and having examined the file herein, finds that Francis M. Leaf, Katherine Mary Leaf, a/k/a Kathy Leaf; Delbert Bowers d/b/a Butch's Garage; County Treasurer, Craig County; Board of County Commissioners, Craig County; and Marie Smith d/b/a Kiddieland Day Care Center were served with Summons and Complaint on July 8, 1976; and J.C. Penney Co., a corporation, was served with Summons and Complaint on July 7, 1976, as appears from the Marshal's Returns of Service filed herein.

It appears that the defendants County Treasurer, Craig County, and Board of County Commissioners, Craig County, have duly filed their Answers on July 20, 1976; and that the defendants

Francis M. Leaf, Katherine Mary Leaf, a/k/a Kathy Leaf; Delbert Bowers, d/b/a Butch's Garage; Marie Smith, d/b/a Kiddieland Day Care Center; and J.C. Penney Co., a corporation, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note, covering the following-described real property located in Craig County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 11, in Block 33, in the City of Vinita, Oklahoma, according to the United States Government Survey and approved plat thereof.

THAT the defendants Francis M. Leaf and Katherine Mary Leaf did, on the 6th day of April, 1972, execute and deliver to the United States of America, acting through the Farmers Home Administration, their mortgage and mortgage note in the amount of \$12,300.00, with 7-1/4 percent interest per annum, and further providing for the payment of annual installments of principal and interest.

The Court further finds that the defendants Francis M. Leaf and Katherine Mary Leaf made default under the terms of the aforesaid mortgage note by reason of their failure to make annual installments due thereon, which default has continued and that by reason thereof, the above-named defendants are now indebted to the plaintiff in the amount of \$12,963.59 as of August 31, 1976, plus interest from and after said date at the rate of 7-1/4 percent per annum, until paid, plus the cost of this action, accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants

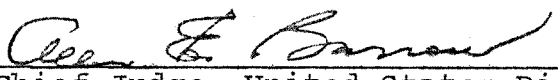
Francis M. Leaf and Katherine Mary Leaf, a/k/a Kathy Leaf, in personam, for the sum of \$12,963.59, with interest thereon at the rate of 7-1/4 percent per annum from August 31, 1976, plus the cost of this action, accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.


IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment, in rem, against the defendants Delbert Bowers d/b/a Butch's Garage; Marie Smith d/b/a Kiddieland Day Care Center; and J.C. Penney Co., a corporation.

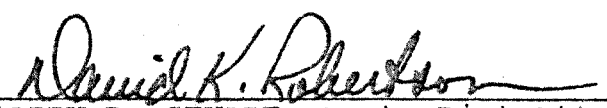
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants, and each of them, and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

APPROVED:


Chief Judge, United States District
Court, Northern District of Oklahoma


ROBERT P. SANTEE, Asst. U.S. Attorney
Attorney for Plaintiff


LARRY D. STUART, Asst. Dist. Attorney
Attorney for Co. Treas., Craig County
and Board of Co. Commissioners, Craig Co.

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

LAWRENCE COYNE,

Plaintiff,

vs.

GREAT SOUTHERN LIFE INSURANCE
COMPANY, a corporation,

Defendant.

NO. 76-C-467-C ✓

FILED

SEP 24 1976


Jack G. Smith, Clerk
U. S. DISTRICT COURT

ph

ORDER OF DISMISSAL WITH PREJUDICE

IT IS HEREBY ORDERED that, pursuant to stipulation by each party, the above-entitled action be dismissed with prejudice to the Plaintiff, each party to bear his own costs.

DATED September 24th, 1976.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

TROY LEE SLAPE, as Next Friend of)

TROY LEE SLAPE, JR.,)

PLAINTIFF)

VS)

HILCREST MEDICAL CENTER, FRANCIS)

L. PERRY, M.D., ANESTHESIOLOGISTS)

ASSOCIATES, INC., MARK H. DONOVAN,)

M.D., DR. DAVID H. COPPLE, M.D.,)

WILLIAM HALL, M.D.,)

DEFENDANTS.

76-C-48

FILED

SEP 24 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER FOR NON-SUIT

BE IT REMEMBERED that on this the 24th day of
September, A. D. 197 6, came on to be heard
the Plaintiff's motion to take a NON SUIT without prejudice
pursuant to rule 41 of the Rules of Civil Procedure, and it
being noted to the Judge by the Clerk of the Court that no
service of Citation has been issued within said suit,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by
the Court that this Cause of Action is hereby dismissed without
prejudice to the rights of the minor child, Troy Lee Slape, Jr.,
to file a law suit in the future within the Statutory limitation
of time.

ENTERED AND RENDERED this the 24th day of
September, A. D. 197 6

/s/ H. Dale Cook
Judge Presiding, United States
District Court for the Northern District
of Oklahoma.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROBERT F. VANCE, Individually,)
and ROBERT F. VANCE, d/b/a)
VANCO CONSTRUCTION COMPANY,)
Plaintiff,)

vs.)

JAMES W. SMITH, Individually,)
DELTA PIPELINE CONSTRUCTION)
COMPANY, INC., and G. B. BOOTS)
SMITH TRUCKLINE COMPANY, INC.,)
Defendants.)

No. 76-C-56-C ✓

FILED

SEP 24 1976

Jack G. Smith, Clerk
U. S. DISTRICT COURT

ORDER SUSTAINING MOTIONS OF DEFENDANTS
G. B. BOOTS SMITH TRUCKLINE COMPANY, INC.
AND JAMES W. SMITH, INDIVIDUALLY, TO DISMISS
AND OVERRULING MOTION OF DEFENDANT
DELTA PIPELINE CONSTRUCTION COMPANY, INC. TO DISMISS

This action results from an alleged breach of a joint venture agreement between the plaintiffs, Vanco Construction Company and Mid-South Construction Company. The Complaint alleges that on August 15, 1969, the plaintiff, Vanco Construction Company, entered into an Agreement with Mid-South Pipeline Construction Company wherein these persons agreed to perform certain duties in connection with a construction project in central Nevada for the Atomic Energy Commission. (See Exhibit A attached to Complaint and Amended Complaint).

It is alleged in the Amended Complaint that plaintiff Robert F. Vance is a citizen of the State of Oklahoma and is doing business under the trade name of Vanco Construction Company, that defendants James W. Smith, Delta Pipeline Construction Company, Inc. (hereinafter "Delta"), and G. B. Boots Smith Truckline Company, Inc., (hereinafter "Boots"), are citizens of the State of Mississippi with the corporate principal places of business in the State of Mississippi. The Amended Complaint further alleges

that Mid-South Construction Company, Inc. (hereinafter "Mid-South") was a Mississippi corporation until it merged with defendant, "Delta" on August 3, 1973. These allegations of citizenship and merger are undisputed in the record.

It is further alleged that the successful completion of the contract with the Atomic Energy Commission induced plaintiff Robert F. Vance and James W. Smith, acting individually and on behalf of "Mid-South" to orally agree to continue the joint venture which resulted in the successful completion of approximately thirty construction projects over a period of four and one-half years in the States of Oklahoma, Texas, Florida, Alabama, and Mississippi.

It is alleged in the Amended Complaint that in January of 1974 the plaintiff and James W. Smith agreed to work toward a conclusion of the joint venture agreement and that upon dissolution a division of profits and accumulated equipment would be made. Plaintiff disputes the accounting of profits and accumulated equipment submitted to him by defendant Smith. In addition to other relief plaintiff seeks an independent detailed accounting of the profits and equipment realized by the alleged joint venture contracts. Plaintiff also seeks compensatory and punitive damages for an alleged fraud by defendant Smith whereby Smith represented that equipment and cash would be provided to plaintiff as a result of the division of joint adventure assets. In this regard, plaintiff alleges that in relying upon this representation he bid on and was awarded two construction contracts which he could not perform because Smith did not distribute the cash and equipment as represented.

Finally, it is alleged that defendant "Boots" is a corporation controlled by James W. Smith and organized for the purpose of purchasing and leasing equipment to defendant "Mid-South" and that an accurate and full accounting cannot be obtained unless a complete accounting of all transactions between "Delta"

and "Boots" is provided.

Jurisdiction over the subject matter is premised on diversity and amount under 28 U.S.C. § 1332.

All of the defendants have filed motions to dismiss on the grounds that the Court lacks in personam jurisdiction over these defendants because they are not subject to service of process within the Northern District of Oklahoma and that the Amended Complaint does not contain a short and plain statement of the jurisdictional grounds as required by Rule 8(a)(1). Specifically, all of the defendants claim that their contracts with the State of Oklahoma are insufficient to subject themselves to the jurisdiction of the Oklahoma courts and therefore to the United States District Court for the Northern District of Oklahoma.

This Court has on numerous occasions examined the principles applicable to the minimum contracts rule announced in International Shoe Company v. State of Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945); Hansen v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958);^{1/} and McGee v. International Life Ins. Co., 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d, 223 (1957).

This Court looks to the "long-arm" statutes of Oklahoma^{2/} and

^{1/} See Jem Engineering & Mfg., Inc. v. Toomer Elec. Co., Inc. 413 F.Supp. 481 (N.D. Okla. 1976); Stillings Trans. Corp. v. Robert Johnson Grain & Molasses Co. 413 F.Supp. 410 (N.D. Okla. 1975); Hulsey v. Atchison Topeka & Santa Fe R.R., 75-C-19 (N.D. Okla. 1976); Compton v. Societe Eurosuise, S.A., 75-C-374 (N.D. Okla. 1975).

^{2/} 12 Okla. Stat. § 187 reads in pertinent part:
"In personam jurisdiction over certain nonresidents . . . service of process . . . venue.

(a) Any person, firm, or corporation other than a foreign insurer licensed to do business in the State of Oklahoma whether or not such party is a citizen or resident of this State and who does, or has done, any of the acts hereinafter enumerated, whether in person or through another, submits himself, or shall have submitted himself, and if an individual his personal representative, to the jurisdiction of the Courts of this State as to any cause of action arising, or which shall have arisen, from the doings of any of said acts:

(1) The transaction of any business within this STATE;
(2) The commission of any act within this State;"

(. . . cont'd)

to the due process clause of the Fourteenth Amendment of the Federal Constitution to determine the contacts necessary for this Court to exercise in personam jurisdiction over these defendants. Doyn Aircraft, Inc. v. Wylie, 443 F.2d 579 (10th Cir. 1971). See Vacu-Maid Inc. v. Covington, 530 P.2d 137 (Okla. 1974); Vemco Plating, Inc. v. Denver Fire Clay Co., 496 P.2d 117 (Okla. 1972); Sims v. Hobbs, 411 P.2d 503 (Okla. 1966); Marathon Battery Co. v. Kilpatrick, 418 P.2d 900 (Okla. 1965).

The party invoking the jurisdiction of the Court has the burden of pleading and proving the existence of jurisdiction. Wilshire Oil Co. of Texas v. Riffe, 409 F.2d 1277 (10th Cir. 1969). Since the defendants have asserted that this Court lacks in personam jurisdiction over them, the burden is on the plaintiff to show that they have submitted themselves to the jurisdiction of Oklahoma under the "long-arm" statutes.

On a motion to dismiss the allegations of the complaint and all supporting affidavits are accepted as true. Gardner v. Toilet Goods Ass'n, Inc., 387 U.S. 167, 87 S.Ct. 1526, 18 L.Ed.2d 704 (1967).

The Amended Complaint alleges that James W. Smith "controlled" the "Boots" corporation which purchased equipment and leased it to defendant "Delta" (Amended Complaint Para. VI.)

The affidavit of James W. Smith states that the affiant has

2/ (. . . cont'd)

12 Okla. Stat. § 1701.03 reads in pertinent part:

"(a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's:

- (1) transacting any business in this state;
- (2) contracting to supply services or things in this state;
- (3) causing tortious injury in this state by an act or omission in this state;
- (4) causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state;
- (5) having an interest in, using, or possessing real property in this state; or
- (6) contracting to insure any person, property, or risk located within this state at the time of contracting; . . . "

not committed any acts in the State of Oklahoma. (Smith Affidavit, Attached to Opening Brief of Defendants James W. Smith and Delta Pipeline Construction Co., Inc., filed June 23, 1976). No allegation is made by the plaintiff that "Boots" leased equipment to "Delta" in the State of Oklahoma or that Smith acted on behalf of "Boots" in the State of Oklahoma. Accepting the allegations of the Amended Complaint as true in regard to the work performed at the Port of Catoosa, there remains no affirmative allegation that defendants "Boots", or that Smith while acting as an officer or agent of "Boots", committed acts within the State of Oklahoma to satisfy the minimum contacts required by Title 12 Okla. Stat. § 187 or Title 12 Okla. Stat. § 1701.03. Therefore as to defendant G. B. Boots Smith Truckline Company, Inc., the plaintiff has failed to support his burden of showing sufficient minimum contacts to provide this Court with jurisdiction over this defendant.

In regard to the defendant James W. Smith it is alleged in the Amended Complaint that:

"Plaintiff would further show that because of the profits earned under the contract with the Atomic Energy Commission, your plaintiff, Robert F. Vance, and the defendant, James W. Smith, acting individually and on behalf of Mid-South Pipeline Construction Company, Inc., orally agreed to continue the joint adventure for the purpose of securing future contracts, and further the co-venturers orally agreed that the same terms and conditions as in the written agreement (Exhibit "A") would be the basis for the continuing joint adventure. . . . Further, plaintiff would show that defendants, James W. Smith, acting individually and on behalf of Mid-South Pipeline Construction Company, Inc., have conducted business within the Northern District of Oklahoma to include performing work with the Tulsa Metropolitan Water Authority on the City of Tulsa, Rogers County Port Authority Industrial Parkline. In January of 1974, your plaintiff and the defendant, James W. Smith, determined that it would be mutually agreeable to work toward a conclusion of the joint adventure, and upon the completion of the remaining work under contract the joint adventure would be dissolved and a division of profits and accumulated equipment would be made." (Amended Complaint, Para. III, p. 3).

In reviewing Exhibit A attached to the Amended Complaint, the Court notes that this Agreement was executed between Mid-South Pipeline Construction Company by James W. Smith and Vanco Construction Company by R. F. Vance. This Agreement charges "Mid-South" with the obligation to furnish bonds, insurance and cash outlay. Vanco Construction Company is charged with the sole responsibility for all field operations. This Agreement was not executed by James W. Smith individually but rather by James W. Smith for "Mid-South". Under the allegations of the Amended Complaint, the same terms and conditions as shown in the written Agreement of 1969 were to control the future conduct of the parties to this Agreement. James W. Smith individually was not made a party to the Agreement of 1969. While the plaintiff, in the Amended Complaint, alleges that James W. Smith acted individually in extending the Agreement of 1969 he is not charged with any obligations or shown to have acted individually in effecting the provisions of the agreement. The affiant, James W. Smith, states the following:

"8. Affiant has not committed any acts in the State of Oklahoma."

"18. Mid-South Pipeline Construction Company, Inc., a Mississippi corporation ("Mid-South Pipeline") performed work in the State of Oklahoma in connection with the construction of the Rogers County Port Authority Industrial Parkline for the Tulsa Metropolitan Water Authority of the City of Tulsa, Oklahoma. All work in connection with that project was completed in 1970. During the completion of that project affiant acted on behalf of Mid-South Pipeline as an officer of the corporation. After 1971 no officer or other representative of Mid-South Pipeline entered the State of Oklahoma and Mid-South Pipeline did not transact any business or commit any acts which would subject it to the jurisdiction of the courts of Oklahoma. Further, none of the activities of Mid-South Pipeline in the State of Oklahoma gave rise to any of the causes of action alleged by the plaintiff in this Amended Complaint."

The record supports the conclusion that James W. Smith acted as an officer of "Mid-South" in his contacts with the plaintiff Vanco Construction Company and did not bind himself individually

to the Agreement between "Mid-South" and Vanco Construction Company.

It is alleged in the Amended Complaint that defendant James W. Smith was negligent in failing to submit a claim in the amount of \$60,000.00 for work performed on the Dallas-Fort Worth, Texas International Airport. In regard to this allegation of negligence the plaintiff has failed to show that the defendant, James W. Smith, individually had any contact with the State of Oklahoma in committing this alleged act of negligence.

Therefore, James W. Smith, individually, had insufficient contacts with the State of Oklahoma which give rise to the Causes of Action alleged in the Complaint and Amended Complaint to grant in personam jurisdiction in this Court. The Motion to Dismiss James W. Smith for lack of in personam jurisdiction over this defendant is sustained.

The Court notes that the plaintiff does not allege that the joint venture agreement of 1969 or that the subsequent oral agreements were entered into in the State of Oklahoma. Thus the question is whether the sole alleged contact of "Mid-South" (now "Delta") which ceased in 1971 is sufficient to grant in personam jurisdiction over the defendant "Delta".

The plaintiff has alleged a continuing joint venture agreement. While it has been held that the cause of action alleged must arise from the contacts of the party over whom jurisdiction is asserted, George v. Strick Corporation, 496 F.2d 10 (10th Cir. 1974); Butler v. Plastics Research and Development Corporation, 387 F.Supp. 227 (E.D. Okla. 1974); Oklahoma Publishing Co. v. National Sportsmen's Club, Inc., 323 F.Supp. 929 (W.D. Okla. 1971), plaintiff's First Cause of Action is premised on a breach of a joint venture agreement which continued substantially under the terms as set out in the written agreement of 1969. (Exhibit A Attached to Amended Complaint). The Amended Complaint alleges that in January, 1974 the parties agreed to terminate the continuing

joint venture agreement after completion of the remaining projects. If a joint venture agreement between "Delta" and Vanco Construction Company existed from August, 1969, until January, 1974, the contacts of "Mid-South" with the State of Oklahoma in 1970 are sufficient to support in personam jurisdiction over the defendant "Delta."

Since it is undisputed that "Mid-South" merged with "Delta" in August of 1973, the Court must determine whether the contact in 1970-71 of "Mid-South" with Oklahoma was assumed by "Delta," the surviving corporation, and therefore results in a contact by "Delta" with the State of Oklahoma.

"Generally speaking, where a corporation succeeds to the assets of another corporation by virtue of a consolidation or merger and not by way of purchase, the new or resulting corporation is liable for the debts and contracts of the other corporation,⁵ although there is no statute imposing a liability and no agreement assuming it. (Footnote Omitted). Corporations cannot by consolidation escape the obligation to pay debts incurred before the consolidation or defeat the right of their creditors to subject their property to the satisfaction of such debt.⁷ It is immaterial that such liabilities are unliquidated. (Footnote Omitted).

5. ...Morrison v. American Snuff Co. 79 Miss 330, 30 So. 723; Skirvin Operating Co. v. Southwestern Electric Co. 71 Okla. 25, 174 P 1069, 15 ALR 1104;

....

7. Vicksburg & Y. City Tel. Co. v. Citizens' Tel. Co. 79 Miss 341, 30 So 725;" 19 Am.Jur.2d Corporations § 1554 (1965). See Okmulgee Window Glass Co. v. Frink, 260 F.159 (8th Cir. 1918) cert.denied, 251 U.S.563, 40 S.Ct.342,64 L.Ed 415 (1919)

Under the general principles of corporate law, the contacts of "Mid-South" may result in jurisdictional contacts of "Delta" in the State of Oklahoma. The plaintiff has met his initial burden of showing that the defendant "Delta" (by merging with "Mid-South") has had sufficient contacts with the State of Oklahoma to endow this Court with in personam jurisdiction. The record has not been fully developed as to the relationships of "Mid-South," "Delta," and the plaintiff. While the affiant, Smith, states that neither he, nor "Mid-South" nor "Delta" entered into

a joint venture agreement with Robert F. Vance this is a conclusion that is properly determined by the Court after the evidence has been submitted. The Agreement indicates that Vanco Construction Company is an Oklahoma corporation with principal offices in Tulsa, Oklahoma. However, the Amended Complaint alleges that Robert F. Vance is doing business under the trade name of Vanco Construction Company and that Robert F. Vance, individually, and Robert F. Vance, doing business as Vanco Construction Company, are one and the same. This apparent conflict, while in need of a resolution, does not abrogate the allegation that Vanco Construction Company and "Mid-South" or "Delta" were joint venturers. If a joint venture existed between the plaintiff, Vanco Construction Company, and the defendant, "Mid-South," as alleged, the contacts of the plaintiff as a representative of the joint venture with the State of Oklahoma are sufficient to grant in personam jurisdiction over the defendant, "Delta."

Pursuant to Rule 8(a)(1) of the Fed.R.Civ.P., the Complaint contains a sufficient statement to establish the grounds on which the Court has jurisdiction over defendant "Delta". Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

The Motion to Quash of defendant "Delta," is premised on insufficient contacts. Having found that the contacts of "Delta" are sufficient to establish in personam jurisdiction over this defendant, the Motion to Quash Service of Summons on "Delta" is moot.


IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss the defendants G. B. Boots Smith Truckline Company, Inc. and James W. Smith, Individually, on the ground that the Court lacks in personam jurisdiction is sustained.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion of defendant Delta Pipeline Construction Company, Inc. to Dismiss for lack of in personam jurisdiction over this defendant, to

Quash Service of Summons, and for failure to provide a jurisdictional statement pursuant to Rule 8(a)(1) of the Fed.R.Civ. P. is overruled.

IT IS FINALLY ORDERED that defendant Delta Pipeline Construction Company, Inc. is granted ten (10) days in which to file an Answer to the Amended Complaint.

It is so Ordered this 24th day of September, 1976.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BARBARA JOHNSON, LINDA WALKER,
BILLIE BUCKLEY, BETTY BRAND,
each on behalf of themselves
and on behalf of all other
persons similarly situated,

Plaintiffs,

vs.

HOUSING AUTHORITY OF THE CITY
OF TULSA, TOM HARES, individually
and in his capacity as Director
of the Housing Authority of
the City of Tulsa, FLOYD JOHNSON,
individually, and in his capacity as man-
ager of the Comanche Park Housing
Project, DON BROOKS, individually
and in his capacity as manager of
the Riverview Housing Project, CARLA
HILL, Secretary of the United States
Department of Housing and Urban
Development,

Defendants.

75-C-421-B

FILED

SEP 24 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

The Court has for consideration a ruling on whether this Court has jurisdiction, and having carefully perused the briefs filed by the parties directed to this issue, and having examined the entire file, and, being fully advised in the premises, finds:

Jurisdiction is alleged to have vested in this Court pursuant to 28 U.S.C. §1343(3); 28 U.S.C. §1343(4); 42 U.S.C. §1983; 28 U.S.C. §1361; Title 63 O.S. §1061; 28 U.S.C. §§2201, 2202; United States Constitution, Amendment Fourteen; United States Constitution, Amendment Five.

JURISDICTIONAL STATUTES INVOLVED:

Title 28 U.S.C. §1343(3) and §1343(4) provide:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

ed.

Plaintiffs further allege that the THA has commenced eviction proceedings against them without first affording an administrative grievance proceeding as required by HUD regulations. Plaintiffs contend that this conduct is in violation of the 5th and 14th Amendments to the Constitution, the Civil Rights Act of 1871, and the Housing and Urban Development Act of 1937 (as amended).

Plaintiffs seek to have this Court declare this matter to be a proper class action and enter a final judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring said conduct to be in violation of the 5th and 14th amendments to the Constitution; the Civil Rights Act of 1871 and the Housing and Urban Development Act of 1937 (as amended). They further seek an accounting concerning the alleged collection of excess utilities .

Plaintiffs further seek a declaratory judgment that all regulations issued by or on behalf of Carla Hill, individually and in her capacity as Secretary of the United States Department of Housing and Urban Development, authorizing or sanctioning the practice of billing plaintiffs and members of their class for excess utility charges, which charges thereby exceed twenty-five (25) percent of plaintiffs' income and that of the class which they represent, to be in violation of the 5th and 14th Amendments to the Constitution, the Civil Rights Act of 1871, and the Housing and Urban Development Act of 1937 (as amended). 42 U.S.C. §1402(1). JURISDICTION AS TO THE DEFENDANT, CARLA HILL, SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

No jurisdiction exists as to Carla Hill with reference to any alleged claim under Title 42 U.S.C. §1983 and Title 28 U.S.C. §1361. Black v. United States, 288 F.Supp. 805 (E.D.N.Y. 1975); 360 U.S. 567 (1958); U.S. Code Cong. & Ad. News, 1962, 87th Cong.2d Sess. p. 2785; Udall v. Oil Shale Corporation, 406 F.2d 759 (10th Cir. 1969); Cosey v. Seamans, 344 F.Supp. 1368 (W.D.Okla. 1972).

The cause of action and complaint should be dismissed as to Carla Hall for lack of jurisdiction and failure to state a cause of action.

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

Title 42 U.S.C. §1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subject, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Title 28 U.S.C. §1361 provides:

"The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

Title 62 O.S. §1061 is the Oklahoma Statute creating a local housing authority.

28 U.S.C. §§2201 and 2202 are the Federal Declaratory Judgment Statutes and are not jurisdiction statutes. They are procedural in nature and neither augment nor diminish the jurisdiction of the federal courts. Moore's Federal Practice, Volume 6A, ¶57.23.

PRELIMINARY INJUNCTION:

Plaintiffs moved to withdraw their motion for a preliminary injunction and said motion was granted by the Court.

FACTUAL ALLEGATIONS:

Plaintiffs, in this litigation, allege that the Housing Authority of the City of Tulsa (hereinafter referred to as THA) has commenced eviction proceedings against them for non-payment of "excess utility" charges for the months of July and August, 1975. Plaintiffs contend that the practice of the THA in imposing excess utility charges violates the provisions of the Brooke Amendment, 42 U.S.C. §1402(1), which limits a public housing tenant's rent to twenty-five (25) percent of his income. Plaintiffs further claim that the collection of excess utility charges by the defendants, THA, Hares, Johnson and Brooks, have deprived plaintiffs and the class they represent of property without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution, the Civil Rights Act of 1871 and the Housing and Urban Development Act of 1937 (as amend-

JURISDICTION AS TO HOUSING AUTHORITY OF THE CITY OF TULSA, TOM HARES, individually and in his capacity as Director of the Housing Authority of the City of Tulsa; FLOYD JOHNSON, individually, and in his capacity as manager of the Comanche Park Housing Project; DON BROOKS, individually and in his capacity as manager of the Riverview Housing Project.

42 U.S.C. §1983:

The Court does have jurisdiction under 42 U.S.C. §1983.

Escalera v. New York City Housing Authority, 425 F.2d 853 (2nd Cir. 1970), at page 864; 42 U.S.C. §1401; Housing Authority of City of Omaha v. United States Housing Authority, 468 F.2d 1 (8th Cir. 1972).

The Court, therefore, has jurisdiction under 42 U.S.C. §1983.

IT, IS, THEREFORE, ORDERED that the cause of action and complaint be and the same are hereby dismissed as against the defendant, Carla Hill.

IT IS FURTHER ORDERED that at the present time it appears that the Court has jurisdiction as to the remaining defendants.

IT IS FURTHER ORDERED that said defendants file a brief as to the question of propriety of class action within 45 days from this date.

ENTERED this 24th day of September, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SKYMART AVIATION, INC.,
a Montana Corporation,

Plaintiff,

vs.

No. 76-C-416-B

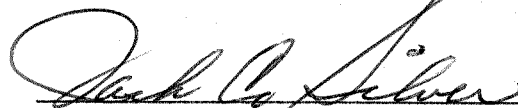
MID-STATES AIRCRAFT ENGINES,
INC., an Oklahoma Corporation, and
AIR-KARE CORPORATION, an
Oklahoma Corporation,

Defendants.

ENTRY OF DEFAULT JUDGMENT BY THE COURT CLERK
OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 23 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

The Court Clerk for the United States District Court for the Northern District of Oklahoma, having examined the Court file of the above styled and numbered cause and having received appropriate requests and affidavits and having determined that the defendants are in default, does hereby and pursuant to Rule 55(b) (1) F.R.C.P. enter judgment by default in favor of the plaintiff, Skymart Aviation, Inc., and against the defendants, Mid-States Aircraft Engines, Inc. and Air-Kare Corporation, in the amount of Twenty-Nine Thousand Nine Hundred and no/100 Dollars (\$29,900.00) together with the costs of this action.


Court Clerk for the United States
District Court for the Northern District
of Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

VERNARD LOWELL DAILEY,

Bankrupt,

KENNETH L. STAINER,
Trustee,

Plaintiff-Appellee,

vs.

GENERAL MOTORS ACCEPTANCE CORPORATION,

Defendant-Appellant.

76-C-186-B

FILED

SEP 23 1976

Jack L. Silver Clerk
U. S. DISTRICT COURT

JUDGMENT

Pursuant to the Order entered this date, Judgment is
entered in favor of Kenneth L. Stainer, Trustee, Plaintiff-Appellee,
and against General Motors Acceptance Corporation, Defendant-Appellant.

ENTERED this 23 day of September, 1976.

Allen E. Barrett

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

VERNARD LOWELL DAILEY,

Bankrupt,

KENNETH L. STAINER, Trustee,

Plaintiff-Appellee,

vs.

GENERAL MOTORS ACCEPTANCE CORPORATION,

Defendant-Appellant.

76-C-186-B

FILED

SEP 23 1976

ORDER

Jack C. Silver, Clerk
U. S. DISTRICT COURT

This matter comes on for consideration by the Court pursuant to an appeal filed by General Motors Acceptance Corporation, Defendant-Appellant herein, from the judgment of the Judge in Bankruptcy entered in the instant litigation on March 15, 1976.

The Judge in Bankruptcy concluded that the claim of General Motors Acceptance Corporation should be disallowed as a secured claim and allowed as a general, unsecured claim in the amount as filed; that the claimant/defendant, General Motors Acceptance Corporation had no right, title or interest in and to the 1975 2-Door Oldsmobile Automobile, Serial No. 3Z57W5M703270; and that the Trustee should be allowed to sell said motor vehicle at private or public sale as ordered by the Court, without further notice to General Motors Acceptance Corporation.

Pursuant to Rule 806 of the Rules of Bankruptcy Procedure, General Motors Acceptance Corporation has submitted the following statement of the issue appealed:

"Whether the Bankruptcy Judge erred in concluding that a financing statement filed in Oklahoma County for purposes of perfecting a security interest in equipment and lacking the signature of the debtor, but containing a reference to an original financing statement signed by the debtor and filed in Tulsa County did not constitute a financing statement under Oklahoma law and that the interest of the defendant in said automobile was subordinate to that of the Trustee's."

Rule 809 of the Rules of Bankruptcy Procedure provides:

"Unless otherwise provided by local rule or court order the parties shall be given an opportunity to be heard on oral argument."

Both parties have orally waived oral argument before the Court and have submitted the issue on briefs and the record on appeal.

Rule 810 of the Rules of Bankruptcy Procedure provides:

"Upon an appeal the district court may affirm, modify, or reverse a referee's judgment or order, or remand with instructions for further proceedings. The Court shall accept the referee's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the referee to judge of the credibility of the witnesses."

The parties filed a Stipulation of Facts, which was amended by an Addendum, and the facts stipulated to by the parties appear as follows:

1. Vernard Lowell Dailey did, on the 13th day of June, 1975, file his Petition for voluntary bankruptcy in the United States District Court for the Northern District of Oklahoma.
2. Vernard Lowell Dailey, the Bankrupt, had been a resident of Delaware County, State of Oklahoma, since the Month of July, 1974.
3. Vernard Lowell Dailey purchased a 1975 Oldsmobile, Serial No. 3257W5M703270 from Dean Bailey Olds, Tulsa, Oklahoma, on the 23rd day of October, 1974. That Vernard Lowell Dailey, as Buyer, and Dean Bailey Olds, as Seller, did execute an instrument dated October 23, 1974, entitled Retail Installment Contract, which listed the above-described motor vehicle. Said instrument was subsequently assigned by Dean Bailey Olds to Defendant, General Motors Acceptance Corporation.
4. That all instruments filed by General Motors Acceptance Corporation and Dean Bailey Olds with the intent to perfect a security interest in said above-described motor vehicle are attached to the Proof of Claim filed herein by General Motors Acceptance Corporation, and that the effectiveness of said instruments are the basis for the dispute in this matter.
5. The parties stipulate that the above-described motor vehicle was used for business purposes.

There is no dispute that the Bankrupt, Vernard Lowell Dailey was also known as Pat Dailey.

At the time of purchase of said vehicle, the Bankrupt executed a UCC Form 1, listing himself as debtor, Dean Bailey Olds as creditor, and the 1975 Oldsmobile as collateral. Said instrument

was assigned to GMAC and filed at 9:30 A.M. on October 30, 1974, with the Tulsa County Clerk.

On October 29, 1974, at 1:08 P.M., GMAC filed in Oklahoma County a UCC Form 1, listing Pat Dailey as debtor, itself as creditor, and describing the automobile. The form is signed by GMAC's agent and bears the notation "Original Filed in Tulsa County". The form is not signed by Pat Dailey. In the space provided for the debtor's signature appears the typed notation "S/S Pat Dailey".

The Judge in Bankruptcy concluded as follows:

1. Under stipulated facts the motor vehicle, as collateral, is to be classified as equipment and not as consumer goods (12A OS §9-109). To perfect the interest of defendant in this collateral it was necessary that a financing statement be filed in the office of the county clerk of Oklahoma County (12A OS §9-401(1)(c)).
2. The formal requisites of a financing statement are set out in §9-402(1) of Title 12A. One of the requisites is that the statement be signed by the debtor. Exceptions to the requirement of the debtor's signature are found in §9-401(2) (property brought into the State of Oklahoma), and in §9-401(3) (situations initially requiring county, or "local", filing followed by a change in the controlling county). Neither of these exceptions is applicable here under the facts requiring the Oklahoma County, or "central", filing in the first instance.
3. It will be concluded that the instrument which was filed in Oklahoma County did not constitute a financing statement under Oklahoma law; that the interest of the defendant was not perfected; and that the interest is subordinate, pursuant to §9-301 of Title 12A, to the rights of the trustee in bankruptcy - the plaintiff here.
4. Under §70c of the Bankruptcy Act the trustee, in confronting the interest of defendant, is accorded the rights of a hypothetical levying creditor without actual notice of such interest (Volume 4A, Collier on Bankruptcy, at p. 607 and following). No constructive notice was imparted either by the defective filing in Oklahoma County or by the inappropriate filing in Tulsa County which will be concluded to be a nullity regardless of the debtor's place of residence.

This Court notes the order attached to GMAC's brief arising from a case in this Court, but feels that the instant litigation is distinguishable from the question raised in that case.

This Court feels that the Judge in Bankruptcy has properly construed the applicable law in his conclusions of law and can find no fault therewith.

Starting from the basic inception of the documents confronted the Court, a UCC 1 form was filed in Tulsa County on October 30, 1974, at 9:20 A.M. This form was signed by the debtor, Pat Dailey.


On October 29, 1974, at 1:08 P.M. GMAC filed in Oklahoma County a UCC Form 1, listing Pat Dailey as debtor and itself as creditor. The form was not signed by the Debtor and reference was made to the Form previously filed in Tulsa County, although it was not filed until the day after.

Thus, this case is distinguishable from the case of Helm v. Hutchins v. GMAC, 75-C-519, United States District Court for the Northern District of Oklahoma. That case dealt with a photostatic copy (bearing a photostatic copy of the original and the signature thereon).

The Court, therefore, concludes that the instrument filed in Oklahoma County did not constitute a financing statement under Oklahoma law; that the interest of the defendant was not perfected; and that the interest is subordinate, pursuant to §9-301 of Title 12A, to the rights of the trustee in bankruptcy - the plaintiff herein.

IT, IS, THEREFORE, ORDERED that Judgment be entered for the plaintiff-trustee-Appellee, and against the Defendant-Appellant, General Motors Acceptance Corporation.

ENTERED this 23 day of September, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION

WILLIAM HAMILTON; WILLIAM DUKE,
JR.; ALVAN N. JOHNSON; EDWARD E.
BROWN; ALEX G. BERRY; HARRY DORSEY;
STERLING M. SCOTT; C. G. MILLER;
NATHANIEL W. ANDERSON; LARUE A.
THOMPSON; JOHN FOOTE; WILLIE
JEFFERSON; JESSEE JAMES JONES;
CORNELIUS GRUBBS; CARL R. SCOTT;
and COMMITTEE ON EQUAL EMPLOYMENT
PRACTICES,

Plaintiffs,

-vs-

VICKERS TULSA DIVISION OF SPERRY
RAND,

Defendant,

and

LOCAL LODGE 790 OF THE
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO and INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO,

Defendants.

FILED
IN OPEN COURT

SEP 23 1976

JACK C. SILVER, CLERK
U. S. DISTRICT COURT

CIVIL ACTION

NO. 74-C-606

SUPPLEMENTAL CONSENT DECREE
WITH UNION DEFENDANTS

The plaintiffs, having filed their original and first Amended Complaint in this action, and the defendants having filed their Answers, and it appearing to the Court that the parties have waived a hearing and the entry of Findings of Facts and Conclusions of Law, and the parties have agreed to the entry by this Court of the following DECREE, without admission by any of the defendants of a violation of 42 U.S.C. §2000e, or of any other Federal, State or Local law or Executive Order, and without a finding by the Court of whether

the defendants intentionally or knowingly discriminated against any person or persons because of race or color in violation of 42 U.S.C. §2000e, or of any other Federal, State or Local law or Executive Order; now, therefore, the Court enters the following ORDER AND DECREE:

I.

PARTIES

A. The plaintiffs in this action are Willaim Hamilton, William Duke, Jr., Alvan N. Johnson, Edward E. Brown, Alex G. Berry, Harry Dorsey, Sterling M. Scott, C. G. Miller, Nathaniel W. Anderson, LaRue A. Thompson, John Foote, Willie Jefferson, Jessee James Jones, Cornelius Grubbs, Carl R. Scott, and Committee on Equal Employment Practices, who either are members of a class of black persons, or who represent such persons, who are either presently employed, will become employed, are retired or have voluntarily quit their employment between January 1, 1972 and the date of this decree, whose employer was, is, or will be Sperry Vickers Tulsa and whose representative for the purposes of collective bargaining was, is, or will be the International Association of Machinists and Aerospace Workers, AFL-CIO, and its Local Lodge 790;

B. The defendants in this action are Sperry Vickers Tulsa (Inaccurately named in the caption as "Vickers Tulsa Division of Sperry Rand"), hereinafter referred to as the "Company" and the International Association of Machinists and Aerospace Workers, AFL-CIO, and its Local Lodge 790, hereinafter referred to jointly as the "Unions" and severally as the "Local Union" and the "International Union".

C. The plaintiffs are adequate representatives of the class above described, which class is so numerous as to make joinder impracticable. There are questions of law and fact common to the class, and the claims and defenses of the class. For the purposes of this Class Determination, the defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate the issuance of final injunctive relief with respect to the class as a whole. This action is therefore found to be properly maintainable under Rule 23 (b)(2) of the Federal Rules of Civil Procedure.

D. The plaintiffs are all black persons who are citizens of the United States and of the State of Oklahoma. The plaintiffs have standing to sue the defendant Unions under 42 U.S.C. § 1981, and have met all the jurisdictional prerequisites to the maintenance of this action.

E. The defendant Unions are labor organizations within the meaning of 42 U.S.C. § 2000e.

F. This DECREE is binding on the plaintiffs and their class, their successors, heirs, assigns and other legal representatives. This DECREE is also binding on the Unions, their officers, agents, employees, successors, members, and all persons in active concert or participation with said Unions. The Court has made no finding of a violation of any kind, but in deciding to approve this CONSENT DECREE, the Court commends the Unions and the Plaintiffs for their effective affirmative proposals herein.

II.

NON-ADMISSION PROVISION

By entering into this DECREE, the Unions do not admit to, nor has the Court made, any determination that there is or has been violation of any law, rule or regulation. No findings of any kind have been issued by the Court substantiating any of the allegations made by the plaintiffs. The Court does accept the terms of the Consent Decree as follows:

III.

GENERAL PROVISIONS

IT IS HEREBY ORDERED that the defendant Unions will not discriminate against Company employees who are Affected Class Members or applicants for membership, by engaging in any act which has either the purpose or effect of:

1. Causing or attempting to cause the Company to discriminate against any individual because of such person's race or color.
2. Failing and refusing to fairly represent in negotiations and contract administration all employees of the Company for which the Unions are bargaining agents without regard to such person's race or color.
3. Failing or refusing to admit, or excluding or expelling from membership, or otherwise discriminating against any employee of the Company because of such person's race or color.
4. Limiting, segregating or classifying any of their members because of such person's race or color.

5. Discouraging complaints or grievances by class members who seek to avail themselves of their rights herein, or retaliating against any class member because of their having filed charges or having participated in this lawsuit in any way.

IV.

SENIORITY

A. The Company and the Unions have agreed to adopt a system of plantwide seniority in accordance with the revised seniority article of the collective bargaining agreement, (Appendix A attached).

B. All layoffs occurring after the effective date of this Decree shall be governed by the revised plantwide seniority article. All recalls of persons presently on layoff shall be governed by the revised plantwide seniority: Provided, that in no event shall the Company be required to disrupt its present workforce by laying off workers who would not be qualified to remain in the active work force under the revised seniority article and replacing those persons with laid off workers who would be entitled to remain in the active work force under the revised seniority article; and this revised seniority article shall be given prospective effect only.

C. Pending final approval of this Consent Decree, the seniority article (Appendix A herein) as approved by the Court on June 14, 1976 shall govern.

V.

QUALIFICATIONS AND PROMOTIONS

A. The Company and the Unions have established a job

posting procedure to fill all openings above Janitor classification as outlined in Article 16.6 of the revised seniority article of the Collective Bargaining Agreement (Appendix A attached).

B. Any affected class member who desires to dispute any action taken hereunder may do so through the established grievance procedure.

VI.

UNION'S CONSENT

The Unions specifically consent to the DECREE and commit to effectively assist the Company wherever possible to achieve its obligations under its Consent Decree approved by the Court on June 14, 1976. The Court further approves the dismissal by the Company of its Counterclaim against the Union defendants, as consideration for the agreement by the Union defendants to the terms of these Decrees.

VII.

MONETARY RELIEF

A. The plaintiffs and Union defendants having stipulated, and the Court having so found, that any alleged discriminatory practices by the Union defendants in any event had ceased by January 1, 1973, the Court hereby finds that the only class members who are entitled to monetary relief are those class members whom the plaintiffs allege to be suffering the present effects of any past discriminatory practices.

B. In full settlement of any and all claims which have been or could have been made in this action by any of the

named plaintiffs or any member of the class defined herein against the Union defendants there shall be paid over to the counsel for plaintiffs the sums set forth in Sealed Appendix B. for distribution in accordance with the provisions set forth in such sealed appendix. It is further ordered that the contents or provisions of such Sealed Appendix shall not be made public by any person, nor shall the sums paid thereunder be disclosed by the parties hereto.

C. The Court further finds, as stipulated by the Plaintiffs and the Union defendants, that all class members other than those enumerated in Sealed Appendix B, are entitled only to the benefits of this Decree relating to non-monetary relief.

VIII.

NOTICE

A. The entry of this Order constitutes approval by the Court of the terms of settlement as required by Rule 23 (e) of the Federal Rules of Civil Procedure.

B. With respect to all issues which concern class members raised in the Complaint in this action, this Order is a final adjudication on the merits.

IX.

TERM OF DECREE

This CONSENT DECREE shall remain in effect until January 1, 1978, and the Court shall retain jurisdiction for the purposes of effectuating this Decree during the above-specified time period.

18/ H. Dale Cook
UNITED STATES DISTRICT JUDGE

CONSENTED TO:

18/ Donald E. Kammer
ATTORNEY FOR PLAINTIFF

18/ Mary L. Mathies
ATTORNEY FOR DEFENDANT COMPANY

18/ Hays Foster
ATTORNEY FOR DEFENDANT UNIONS

APPENDIX A

Revised Article 16 - Seniority

(16.1) The seniority of an employee is that time spent by an employee in the employ of the Company from the date of their last official hiring into the employ of the Company, and unless otherwise specifically so stated, shall in this Agreement be understood to refer to plant seniority.

(16.2) The seniority of employees upon completion of the probationary period is determined as follows:

- A. Any newly hired employee employed for less than thirty-one (31) calendar days is considered a probationary employee and his/her employment status during such probationary period shall be considered temporary. The service of such probationary employees, at any time during the probationary period, may be terminated at the sole discretion of the Company. He/she shall have no seniority during that period nor be entitled to any of the other privileges available to employees upon completion of their probation, the employee's name will be placed on the seniority list as of his/her first day worked.
- B. In the event of reclassification, an employee shall be on trial for forty-five (45) calendar days in the new classification.
- C. In the event that an employee fails to

perform to the Company's satisfaction during the course of his/her trial period in the new classification, the Company reserves the right to return such employee to his/her former classification.

(16.3) When it becomes necessary to reduce personnel, employees with the least amount of plant seniority in the affected classification shall be laid off first. A minimum of forty-eight (48) hours notice shall be given to an employee who is to be laid off. Upon receiving notice that he/she is to be laid off, the employee may:

- A. Accept a voluntary layoff; or,
- B. Accept any lower-rated classification in his/her job family (as outlined in Appendix "C" of the Collective Bargaining Agreement, attached) to which his/her seniority entitles him/her; or,
- C. Claim any lower-rated classification in any other job family, provided the employee has satisfactorily completed a trial period in that classification, or he/she may claim a lower classification in that job family.
- D. Employees who do not claim any classification, according to the above, or who cannot retain a classification in any job family, will be placed in the highest pool classification which they have sufficient seniority to retain.
- E. Subject to the provision of Sections 16.7 and 16.7A of this Article, employees so exercising their seniority shall be assigned to the department and classification of the

employee they are displacing and shall receive their current rate from the classification from which they are removed or the current top rate of the classification to which they are downgraded, whichever is less. When an employee exercises his/her seniority for preference of shift when downgrading, Section 16.7B of this Article will not apply.

- F. Employees who accept downgrading and remain in the employ of the Company shall be defined as "inactive" with respect to the classification from which they were removed.
- G. Employees separated from the employ of the Company as the result of a reduction in force are defined as "laid-off" employees.
- H. A laid-off or downgraded employee is subject to recall in seniority order to fill vacancies in the classification in which he/she is "inactive" or to lower classifications in the job family.
- I. A laid-off employee having completed his/her probationary period will remain on the recall list for twenty-four (24) calendar months.

(16.4) Time lost as a result of authorized leave of absence or layoff shall be considered as time served. An employee promoted to a job outside the bargaining unit will retain and shall continue to accumulate his/her bargaining unit seniority for a period of eighteen (18) months from the date

of such promotion. If such employee is returned to the bargaining unit within such eighteen (18) month period, he/she shall be placed in the highest paid classification in which he/she has satisfactorily completed a trial period and in which his/her bargaining unit seniority entitles him/her to displace at that time. The bargaining unit seniority of any employee not returned to the bargaining unit within such eighteen (18) month period shall be cancelled.

(16.5) All seniority and recall rights shall be forfeited by:

- A. Voluntary quitting.
- B. Discharge for cause.
- C. Twenty-four (24) consecutive months of layoff or authorized leave of absence (except as provided in Paragraph 16.4), unless the leave of absence is granted an employee as a result of an industrial injury sustained in his/her employment with the Company, or if the employee accepts a full time position as a Union official.
- D. Failure to report within five (5) calendar days of the sending of a registered letter or telegram to the employee's recorded address offering him/her rehire.
- E. Exception may be made to the provision of Section 16.5D above in the event such employee presents to the Company within ten (10) days of the sending of such recall notice a valid reason, acceptable to the Company for his/her failure to report. In such case, he/she will await recall to the next available opening.

- F. When an employee is automatically retired upon reaching age 65.
- G. If the employee is absent three (3) consecutive regular work days without an approved leave of absence. If an employee is given an approved leave of absence by phone, a written leave shall be sent by mail and a copy given to the Plant Committeeman.
- H. An employee on disability leave who qualifies and receives disability benefits from Social Security will be processed as a termination.

(16.6) When the Company determines that there is a vacancy to which no laid-off or downgraded employee is inactive, advancements of employees from lower classifications shall be made in accordance with the procedure herein outlined, before the employment of new employees.

- A. The Company will post a notice on the bulletin board designated for job postings, describing the necessary qualifications, the wage rate, and the shift. This notice shall be posted for a minimum of three (3) working days. Interested applicants for the posted vacancy shall indicate their desire for reclassification to the vacancy by signing the posting. This posting procedure will not be used for the purpose of downgrading. Any employee who is scheduled for vacation may indicate a desire in writing to the Personnel Office to be considered for any specified job vacancies which occur while he/she is on vacation: Provided, that the employee shall be obligated to fill such

vacancy upon return, if selected.

- B. Selection for promotion to the posted vacancy shall be made among those applicants on the basis of uniformly applied, non-discriminatory criteria as to the applicant's qualifications to do the job. In the event that more than one applicant is qualified, the employee with the greatest plantwide seniority will be given preference, subject to 16.6C (below).
- C. If the vacancy occurs in a job grouping (as outlined in Appendix D of the Collective Bargaining Agreement attached) that has fewer than 10% minority representation then the following procedure will apply:
1. If the most senior qualified employee who signs the posting is an Affected Class member, that employee will be advanced or reclassified in accordance with the preceding provisions.
 2. If the most senior employee who signs the posting is a non-affected class member and there are qualified Affected Class members requesting to fill the vacancy, and there are fewer than 10% Affected Class member employees in the job grouping, then the most senior qualified Affected Class member who signs the posting will be reclassified at a ratio of not less than one (1) for every four (4) vacancies.
- D. An applicant who disagrees with the deter-

mination made by the Company as provided in this Section may appeal the determination through the Grievance Procedure.

- E. Posted vacancies may be filled by the Company on a temporary basis while the job posting procedure is in progress.
- F. The Company shall be under no obligation to consider any employee for advancement until such time as the employee has completed ninety (90) consecutive calendar days in his current classification.

(16.7) Employees shall have preference of shifts in their classification in accordance with their plantwide seniority subject to the following provisions:

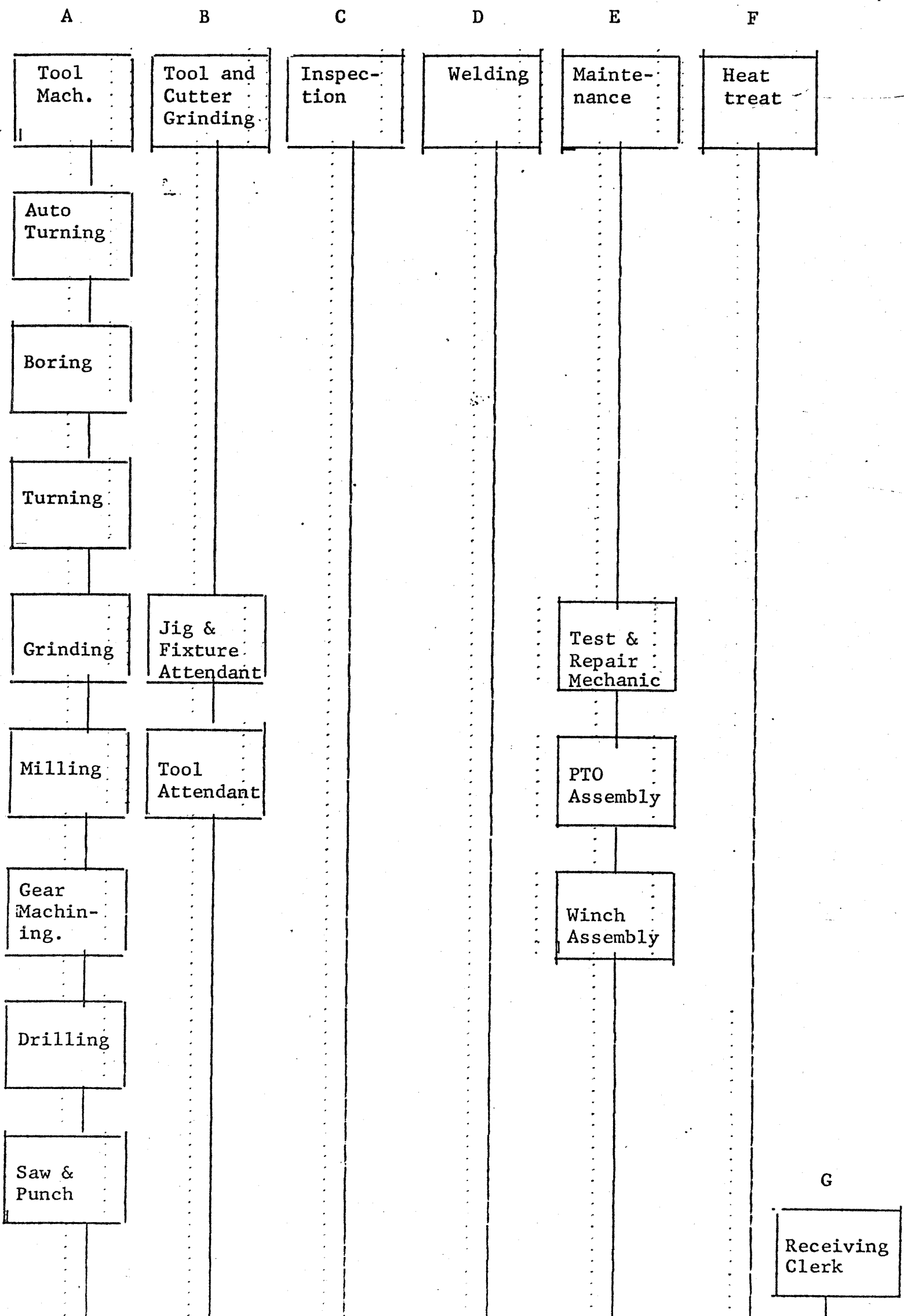
- A. The Company shall have the right to grant or withhold such preference in order to attain the necessary distribution of skilled and experienced employees required on the shifts for a period necessary to train a shorter service employee, not to exceed the probationary period or trial period, whichever is applicable.
- B. No employee shall exercise such preference of shifts more than once in any twelve (12) month period.
- C. The assignment of employees to jobs within a classification including overtime assignments shall be based on the skill and ability of the employee and the Company's requirements. Such assignments are not subject to the seniority provisions of this Agreement.

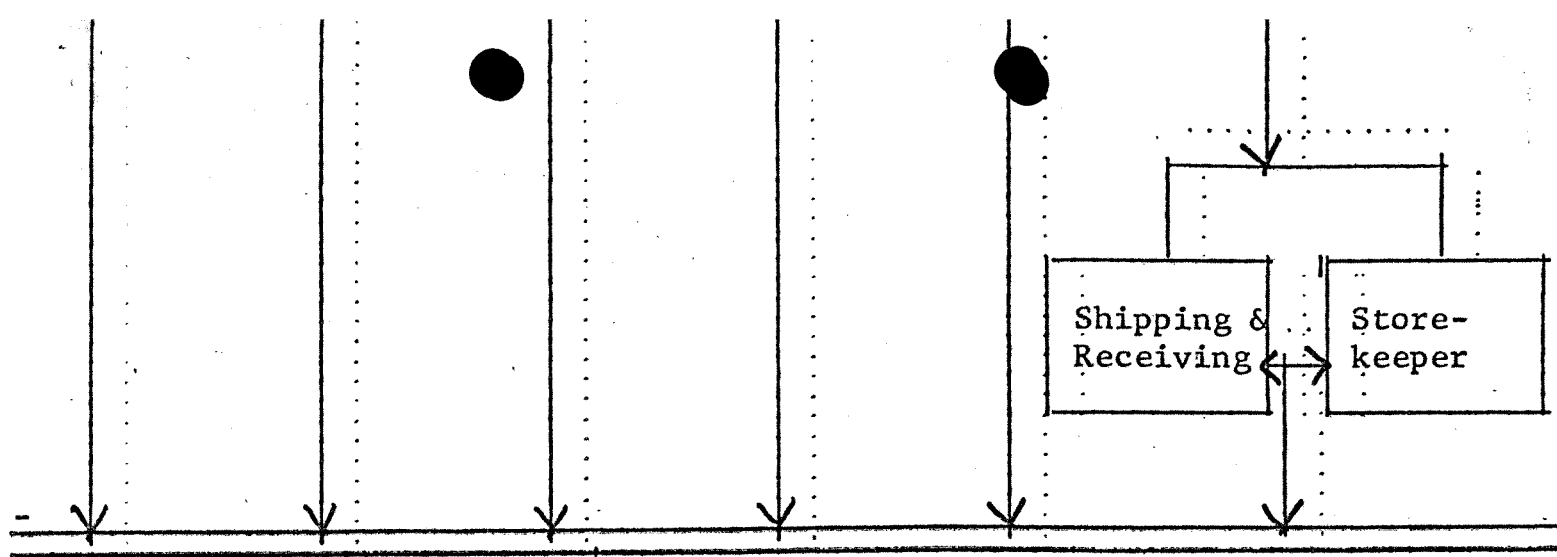
(16.8) Employees may be temporarily transferred to perform work outside of their classification, it being understood that such loans shall not exceed ten (10) working days (20 days for vacation relief) at any one time except by mutual agreement of the employee and the Company. When such loan extends one (1) regularly scheduled work week and the employee involved is not receiving a rate equal to or above the minimum rate of the classification to which he/she is on loan, his/her rate shall be adjusted to such minimum for the remainder of the loan period.

(16.9) When the Company schedules an inventory period, there may be a complete or partial cessation of production and maintenance activities. There shall be no exercise of displacement rights in this event, and no notice of layoff shall be required. Among those who have not been disqualified on the basis of previous inventory experience with the Company, senior employees will be given preference. Seniority shall not govern the order of selecting which employees are sent home as the inventory progresses except that within specific inventory teams seniority will be observed.

APPENDIX "C"

JOB FAMILIES





POOL CLASSIFICATIONS

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

TROY LEE SLAPE, as Next Friend of)

TROY LEE SLAPE, JR.,)

PLAINTIFF)

VS)

HILCREST MEDICAL CENTER, FRANCIS)

L. PERRY, M.D., ANESTHESIOLOGISTS)

ASSOCIATES, INC., MARK H. DONOVAN,)

M.D., DR. DAVID H. COPPLE, M.D.,)

WILLIAM HALL, M.D.,)

DEFENDANTS.

76-C-48

FILED

SEP 24 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER FOR NON-SUIT

BE IT REMEMBERED that on this the 24th day of
September, A. D. 197 6, came on to be heard
the Plaintiff's motion to take a NON SUIT without prejudice
pursuant to rule 41 of the Rules of Civil Procedure, and it
being noted to the Judge by the Clerk of the Court that no
service of Citation has been issued within said suit,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by
the Court that this Cause of Action is hereby dismissed without
prejudice to the rights of the minor child, Troy Lee Slape, Jr.,
to file a law suit in the future within the Statutory limitation
of time.

ENTERED AND RENDERED this the 24th day of
September, A. D. 197 6

/s/ H. Dale Cook
Judge Presiding, United States
District Court for the Northern District
of Oklahoma.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROBERT F. VANCE, Individually,)
and ROBERT F. VANCE, d/b/a)
VANCO CONSTRUCTION COMPANY,)
Plaintiff,)

vs.)

JAMES W. SMITH, Individually,)
DELTA PIPELINE CONSTRUCTION)
COMPANY, INC., and G. B. BOOTS)
SMITH TRUCKLINE COMPANY, INC.,)
Defendants.)

No. 76-C-56-C ✓

FILED

SEP 24 1976

Jack G. Smith, Clerk
U. S. DISTRICT COURT

ORDER SUSTAINING MOTIONS OF DEFENDANTS
G. B. BOOTS SMITH TRUCKLINE COMPANY, INC.
AND JAMES W. SMITH, INDIVIDUALLY, TO DISMISS
AND OVERRULING MOTION OF DEFENDANT
DELTA PIPELINE CONSTRUCTION COMPANY, INC. TO DISMISS

This action results from an alleged breach of a joint venture agreement between the plaintiffs, Vanco Construction Company and Mid-South Construction Company. The Complaint alleges that on August 15, 1969, the plaintiff, Vanco Construction Company, entered into an Agreement with Mid-South Pipeline Construction Company wherein these persons agreed to perform certain duties in connection with a construction project in central Nevada for the Atomic Energy Commission. (See Exhibit A attached to Complaint and Amended Complaint).

It is alleged in the Amended Complaint that plaintiff Robert F. Vance is a citizen of the State of Oklahoma and is doing business under the trade name of Vanco Construction Company, that defendants James W. Smith, Delta Pipeline Construction Company, Inc. (hereinafter "Delta"), and G. B. Boots Smith Truckline Company, Inc., (hereinafter "Boots"), are citizens of the State of Mississippi with the corporate principal places of business in the State of Mississippi. The Amended Complaint further alleges

that Mid-South Construction Company, Inc. (hereinafter "Mid-South") was a Mississippi corporation until it merged with defendant, "Delta" on August 3, 1973. These allegations of citizenship and merger are undisputed in the record.

It is further alleged that the successful completion of the contract with the Atomic Energy Commission induced plaintiff Robert F. Vance and James W. Smith, acting individually and on behalf of "Mid-South" to orally agree to continue the joint venture which resulted in the successful completion of approximately thirty construction projects over a period of four and one-half years in the States of Oklahoma, Texas, Florida, Alabama, and Mississippi.

It is alleged in the Amended Complaint that in January of 1974 the plaintiff and James W. Smith agreed to work toward a conclusion of the joint venture agreement and that upon dissolution a division of profits and accumulated equipment would be made. Plaintiff disputes the accounting of profits and accumulated equipment submitted to him by defendant Smith. In addition to other relief plaintiff seeks an independent detailed accounting of the profits and equipment realized by the alleged joint venture contracts. Plaintiff also seeks compensatory and punitive damages for an alleged fraud by defendant Smith whereby Smith represented that equipment and cash would be provided to plaintiff as a result of the division of joint adventure assets. In this regard, plaintiff alleges that in relying upon this representation he bid on and was awarded two construction contracts which he could not perform because Smith did not distribute the cash and equipment as represented.

Finally, it is alleged that defendant "Boots" is a corporation controlled by James W. Smith and organized for the purpose of purchasing and leasing equipment to defendant "Mid-South" and that an accurate and full accounting cannot be obtained unless a complete accounting of all transactions between "Delta"

and "Boots" is provided.

Jurisdiction over the subject matter is premised on diversity and amount under 28 U.S.C. § 1332.

All of the defendants have filed motions to dismiss on the grounds that the Court lacks in personam jurisdiction over these defendants because they are not subject to service of process within the Northern District of Oklahoma and that the Amended Complaint does not contain a short and plain statement of the jurisdictional grounds as required by Rule 8(a)(1). Specifically, all of the defendants claim that their contracts with the State of Oklahoma are insufficient to subject themselves to the jurisdiction of the Oklahoma courts and therefore to the United States District Court for the Northern District of Oklahoma.

This Court has on numerous occasions examined the principles applicable to the minimum contracts rule announced in International Shoe Company v. State of Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945); Hansen v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958);^{1/} and McGee v. International Life Ins. Co., 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d, 223 (1957).

This Court looks to the "long-arm" statutes of Oklahoma^{2/} and

^{1/} See Jem Engineering & Mfg., Inc. v. Toomer Elec. Co., Inc. 413 F.Supp. 481 (N.D. Okla. 1976); Stillings Trans. Corp. v. Robert Johnson Grain & Molasses Co. 413 F.Supp. 410 (N.D. Okla. 1975); Hulsey v. Atchison Topeka & Santa Fe R.R., 75-C-19 (N.D. Okla. 1976); Compton v. Societe Eurosuise, S.A., 75-C-374 (N.D. Okla. 1975).

^{2/} 12 Okla. Stat. § 187 reads in pertinent part:
"In personam jurisdiction over certain nonresidents . . . service of process . . . venue.

(a) Any person, firm, or corporation other than a foreign insurer licensed to do business in the State of Oklahoma whether or not such party is a citizen or resident of this State and who does, or has done, any of the acts hereinafter enumerated, whether in person or through another, submits himself, or shall have submitted himself, and if an individual his personal representative, to the jurisdiction of the Courts of this State as to any cause of action arising, or which shall have arisen, from the doings of any of said acts:

(1) The transaction of any business within this STATE;
(2) The commission of any act within this State;"

(. . . cont'd)

to the due process clause of the Fourteenth Amendment of the Federal Constitution to determine the contacts necessary for this Court to exercise in personam jurisdiction over these defendants. Doyn Aircraft, Inc. v. Wylie, 443 F.2d 579 (10th Cir. 1971). See Vacu-Maid Inc. v. Covington, 530 P.2d 137 (Okla. 1974); Vemco Plating, Inc. v. Denver Fire Clay Co., 496 P.2d 117 (Okla. 1972); Sims v. Hobbs, 411 P.2d 503 (Okla. 1966); Marathon Battery Co. v. Kilpatrick, 418 P.2d 900 (Okla. 1965).

The party invoking the jurisdiction of the Court has the burden of pleading and proving the existence of jurisdiction. Wilshire Oil Co. of Texas v. Riffe, 409 F.2d 1277 (10th Cir. 1969). Since the defendants have asserted that this Court lacks in personam jurisdiction over them, the burden is on the plaintiff to show that they have submitted themselves to the jurisdiction of Oklahoma under the "long-arm" statutes.

On a motion to dismiss the allegations of the complaint and all supporting affidavits are accepted as true. Gardner v. Toilet Goods Ass'n, Inc., 387 U.S. 167, 87 S.Ct. 1526, 18 L.Ed.2d 704 (1967).

The Amended Complaint alleges that James W. Smith "controlled" the "Boots" corporation which purchased equipment and leased it to defendant "Delta" (Amended Complaint Para. VI.)

The affidavit of James W. Smith states that the affiant has

2/ (. . . cont'd)

12 Okla. Stat. § 1701.03 reads in pertinent part:

"(a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's:

- (1) transacting any business in this state;
- (2) contracting to supply services or things in this state;
- (3) causing tortious injury in this state by an act or omission in this state;
- (4) causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state;
- (5) having an interest in, using, or possessing real property in this state; or
- (6) contracting to insure any person, property, or risk located within this state at the time of contracting; . . . "

not committed any acts in the State of Oklahoma. (Smith Affidavit, Attached to Opening Brief of Defendants James W. Smith and Delta Pipeline Construction Co., Inc., filed June 23, 1976). No allegation is made by the plaintiff that "Boots" leased equipment to "Delta" in the State of Oklahoma or that Smith acted on behalf of "Boots" in the State of Oklahoma. Accepting the allegations of the Amended Complaint as true in regard to the work performed at the Port of Catoosa, there remains no affirmative allegation that defendants "Boots", or that Smith while acting as an officer or agent of "Boots", committed acts within the State of Oklahoma to satisfy the minimum contacts required by Title 12 Okla. Stat. § 187 or Title 12 Okla. Stat. § 1701.03. Therefore as to defendant G. B. Boots Smith Truckline Company, Inc., the plaintiff has failed to support his burden of showing sufficient minimum contacts to provide this Court with jurisdiction over this defendant.

In regard to the defendant James W. Smith it is alleged in the Amended Complaint that:

"Plaintiff would further show that because of the profits earned under the contract with the Atomic Energy Commission, your plaintiff, Robert F. Vance, and the defendant, James W. Smith, acting individually and on behalf of Mid-South Pipeline Construction Company, Inc., orally agreed to continue the joint adventure for the purpose of securing future contracts, and further the co-venturers orally agreed that the same terms and conditions as in the written agreement (Exhibit "A") would be the basis for the continuing joint adventure. . . . Further, plaintiff would show that defendants, James W. Smith, acting individually and on behalf of Mid-South Pipeline Construction Company, Inc., have conducted business within the Northern District of Oklahoma to include performing work with the Tulsa Metropolitan Water Authority on the City of Tulsa, Rogers County Port Authority Industrial Parkline. In January of 1974, your plaintiff and the defendant, James W. Smith, determined that it would be mutually agreeable to work toward a conclusion of the joint adventure, and upon the completion of the remaining work under contract the joint adventure would be dissolved and a division of profits and accumulated equipment would be made." (Amended Complaint, Para. III, p. 3).

In reviewing Exhibit A attached to the Amended Complaint, the Court notes that this Agreement was executed between Mid-South Pipeline Construction Company by James W. Smith and Vanco Construction Company by R. F. Vance. This Agreement charges "Mid-South" with the obligation to furnish bonds, insurance and cash outlay. Vanco Construction Company is charged with the sole responsibility for all field operations. This Agreement was not executed by James W. Smith individually but rather by James W. Smith for "Mid-South". Under the allegations of the Amended Complaint, the same terms and conditions as shown in the written Agreement of 1969 were to control the future conduct of the parties to this Agreement. James W. Smith individually was not made a party to the Agreement of 1969. While the plaintiff, in the Amended Complaint, alleges that James W. Smith acted individually in extending the Agreement of 1969 he is not charged with any obligations or shown to have acted individually in effecting the provisions of the agreement. The affiant, James W. Smith, states the following:

"8. Affiant has not committed any acts in the State of Oklahoma."

"18. Mid-South Pipeline Construction Company, Inc., a Mississippi corporation ("Mid-South Pipeline") performed work in the State of Oklahoma in connection with the construction of the Rogers County Port Authority Industrial Parkline for the Tulsa Metropolitan Water Authority of the City of Tulsa, Oklahoma. All work in connection with that project was completed in 1970. During the completion of that project affiant acted on behalf of Mid-South Pipeline as an officer of the corporation. After 1971 no officer or other representative of Mid-South Pipeline entered the State of Oklahoma and Mid-South Pipeline did not transact any business or commit any acts which would subject it to the jurisdiction of the courts of Oklahoma. Further, none of the activities of Mid-South Pipeline in the State of Oklahoma gave rise to any of the causes of action alleged by the plaintiff in this Amended Complaint."

The record supports the conclusion that James W. Smith acted as an officer of "Mid-South" in his contacts with the plaintiff Vanco Construction Company and did not bind himself individually

to the Agreement between "Mid-South" and Vanco Construction Company.

It is alleged in the Amended Complaint that defendant James W. Smith was negligent in failing to submit a claim in the amount of \$60,000.00 for work performed on the Dallas-Fort Worth, Texas International Airport. In regard to this allegation of negligence the plaintiff has failed to show that the defendant, James W. Smith, individually had any contact with the State of Oklahoma in committing this alleged act of negligence.

Therefore, James W. Smith, individually, had insufficient contacts with the State of Oklahoma which give rise to the Causes of Action alleged in the Complaint and Amended Complaint to grant in personam jurisdiction in this Court. The Motion to Dismiss James W. Smith for lack of in personam jurisdiction over this defendant is sustained.

The Court notes that the plaintiff does not allege that the joint venture agreement of 1969 or that the subsequent oral agreements were entered into in the State of Oklahoma. Thus the question is whether the sole alleged contact of "Mid-South" (now "Delta") which ceased in 1971 is sufficient to grant in personam jurisdiction over the defendant "Delta".

The plaintiff has alleged a continuing joint venture agreement. While it has been held that the cause of action alleged must arise from the contacts of the party over whom jurisdiction is asserted, George v. Strick Corporation, 496 F.2d 10 (10th Cir. 1974); Butler v. Plastics Research and Development Corporation, 387 F.Supp. 227 (E.D. Okla. 1974); Oklahoma Publishing Co. v. National Sportsmen's Club, Inc., 323 F.Supp. 929 (W.D. Okla. 1971), plaintiff's First Cause of Action is premised on a breach of a joint venture agreement which continued substantially under the terms as set out in the written agreement of 1969. (Exhibit A Attached to Amended Complaint). The Amended Complaint alleges that in January, 1974 the parties agreed to terminate the continuing

joint venture agreement after completion of the remaining projects. If a joint venture agreement between "Delta" and Vanco Construction Company existed from August, 1969, until January, 1974, the contacts of "Mid-South" with the State of Oklahoma in 1970 are sufficient to support in personam jurisdiction over the defendant "Delta."

Since it is undisputed that "Mid-South" merged with "Delta" in August of 1973, the Court must determine whether the contact in 1970-71 of "Mid-South" with Oklahoma was assumed by "Delta," the surviving corporation, and therefore results in a contact by "Delta" with the State of Oklahoma.

"Generally speaking, where a corporation succeeds to the assets of another corporation by virtue of a consolidation or merger and not by way of purchase, the new or resulting corporation is liable for the debts and contracts of the other corporation,⁵ although there is no statute imposing a liability and no agreement assuming it. (Footnote Omitted). Corporations cannot by consolidation escape the obligation to pay debts incurred before the consolidation or defeat the right of their creditors to subject their property to the satisfaction of such debt.⁷ It is immaterial that such liabilities are unliquidated. (Footnote Omitted).

5. ...Morrison v. American Snuff Co. 79 Miss 330, 30 So. 723; Skirvin Operating Co. v. Southwestern Electric Co. 71 Okla. 25, 174 P 1069, 15 ALR 1104;

....

7. Vicksburg & Y. City Tel. Co. v. Citizens' Tel. Co. 79 Miss 341, 30 So 725;" 19 Am.Jur.2d Corporations § 1554 (1965). See Okmulgee Window Glass Co. v. Frink, 260 F.159 (8th Cir. 1918) cert.denied, 251 U.S.563, 40 S.Ct.342, 64 L.Ed 415 (1919)

Under the general principles of corporate law, the contacts of "Mid-South" may result in jurisdictional contacts of "Delta" in the State of Oklahoma. The plaintiff has met his initial burden of showing that the defendant "Delta" (by merging with "Mid-South") has had sufficient contacts with the State of Oklahoma to endow this Court with in personam jurisdiction. The record has not been fully developed as to the relationships of "Mid-South," "Delta," and the plaintiff. While the affiant, Smith, states that neither he, nor "Mid-South" nor "Delta" entered into

a joint venture agreement with Robert F. Vance this is a conclusion that is properly determined by the Court after the evidence has been submitted. The Agreement indicates that Vanco Construction Company is an Oklahoma corporation with principal offices in Tulsa, Oklahoma. However, the Amended Complaint alleges that Robert F. Vance is doing business under the trade name of Vanco Construction Company and that Robert F. Vance, individually, and Robert F. Vance, doing business as Vanco Construction Company, are one and the same. This apparent conflict, while in need of a resolution, does not abrogate the allegation that Vanco Construction Company and "Mid-South" or "Delta" were joint venturers. If a joint venture existed between the plaintiff, Vanco Construction Company, and the defendant, "Mid-South," as alleged, the contacts of the plaintiff as a representative of the joint venture with the State of Oklahoma are sufficient to grant in personam jurisdiction over the defendant, "Delta."

Pursuant to Rule 8(a)(1) of the Fed.R.Civ.P., the Complaint contains a sufficient statement to establish the grounds on which the Court has jurisdiction over defendant "Delta". Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

The Motion to Quash of defendant "Delta," is premised on insufficient contacts. Having found that the contacts of "Delta" are sufficient to establish in personam jurisdiction over this defendant, the Motion to Quash Service of Summons on "Delta" is moot.


IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss the defendants G. B. Boots Smith Truckline Company, Inc. and James W. Smith, Individually, on the ground that the Court lacks in personam jurisdiction is sustained.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion of defendant Delta Pipeline Construction Company, Inc. to Dismiss for lack of in personam jurisdiction over this defendant, to

Quash Service of Summons, and for failure to provide a jurisdictional statement pursuant to Rule 8(a)(1) of the Fed.R.Civ. P. is overruled.

IT IS FINALLY ORDERED that defendant Delta Pipeline Construction Company, Inc. is granted ten (10) days in which to file an Answer to the Amended Complaint.

It is so Ordered this 24th day of September, 1976.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BARBARA JOHNSON, LINDA WALKER,
BILLIE BUCKLEY, BETTY BRAND,
each on behalf of themselves
and on behalf of all other
persons similarly situated,

Plaintiffs,

vs.

HOUSING AUTHORITY OF THE CITY
OF TULSA, TOM HARES, individually
and in his capacity as Director
of the Housing Authority of
the City of Tulsa, FLOYD JOHNSON,
individually, and in his capacity as man-
ager of the Comanche Park Housing
Project, DON BROOKS, individually
and in his capacity as manager of
the Riverview Housing Project, CARLA
HILL, Secretary of the United States
Department of Housing and Urban
Development,

Defendants.

75-C-421-B

FILED

SEP 24 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

The Court has for consideration a ruling on whether this Court has jurisdiction, and having carefully perused the briefs filed by the parties directed to this issue, and having examined the entire file, and, being fully advised in the premises, finds:

Jurisdiction is alleged to have vested in this Court pursuant to 28 U.S.C. §1343(3); 28 U.S.C. §1343(4); 42 U.S.C. §1983; 28 U.S.C. §1361; Title 63 O.S. §1061; 28 U.S.C. §§2201, 2202; United States Constitution, Amendment Fourteen; United States Constitution, Amendment Five.

JURISDICTIONAL STATUTES INVOLVED:

Title 28 U.S.C. §1343(3) and §1343(4) provide:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

ed.

Plaintiffs further allege that the THA has commenced eviction proceedings against them without first affording an administrative grievance proceeding as required by HUD regulations. Plaintiffs contend that this conduct is in violation of the 5th and 14th Amendments to the Constitution, the Civil Rights Act of 1871, and the Housing and Urban Development Act of 1937 (as amended).

Plaintiffs seek to have this Court declare this matter to be a proper class action and enter a final judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring said conduct to be in violation of the 5th and 14th amendments to the Constitution; the Civil Rights Act of 1871 and the Housing and Urban Development Act of 1937 (as amended). They further seek an accounting concerning the alleged collection of excess utilities .

Plaintiffs further seek a declaratory judgment that all regulations issued by or on behalf of Carla Hill, individually and in her capacity as Secretary of the United States Department of Housing and Urban Development, authorizing or sanctioning the practice of billing plaintiffs and members of their class for excess utility charges, which charges thereby exceed twenty-five (25) percent of plaintiffs' income and that of the class which they represent, to be in violation of the 5th and 14th Amendments to the Constitution, the Civil Rights Act of 1871, and the Housing and Urban Development Act of 1937 (as amended). 42 U.S.C. §1402(1). JURISDICTION AS TO THE DEFENDANT, CARLA HILL, SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

No jurisdiction exists as to Carla Hill with reference to any alleged claim under Title 42 U.S.C. §1983 and Title 28 U.S.C. §1361. Black v. United States, 288 F.Supp. 805 (E.D.N.Y. 1975); 360 U.S. 567 (1958); U.S. Code Cong. & Ad. News, 1962, 87th Cong.2d Sess. p. 2785; Udall v. Oil Shale Corporation, 406 F.2d 759 (10th Cir. 1969); Cosey v. Seamans, 344 F.Supp. 1368 (W.D.Okla. 1972).

The cause of action and complaint should be dismissed as to Carla Hall for lack of jurisdiction and failure to state a cause of action.

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

Title 42 U.S.C. §1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subject, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Title 28 U.S.C. §1361 provides:

"The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

Title 62 O.S. §1061 is the Oklahoma Statute creating a local housing authority.

28 U.S.C. §§2201 and 2202 are the Federal Declaratory Judgment Statutes and are not jurisdiction statutes. They are procedural in nature and neither augment nor diminish the jurisdiction of the federal courts. Moore's Federal Practice, Volume 6A, ¶57.23.

PRELIMINARY INJUNCTION:

Plaintiffs moved to withdraw their motion for a preliminary injunction and said motion was granted by the Court.

FACTUAL ALLEGATIONS:

Plaintiffs, in this litigation, allege that the Housing Authority of the City of Tulsa (hereinafter referred to as THA) has commenced eviction proceedings against them for non-payment of "excess utility" charges for the months of July and August, 1975. Plaintiffs contend that the practice of the THA in imposing excess utility charges violates the provisions of the Brooke Amendment, 42 U.S.C. §1402(1), which limits a public housing tenant's rent to twenty-five (25) percent of his income. Plaintiffs further claim that the collection of excess utility charges by the defendants, THA, Hares, Johnson and Brooks, have deprived plaintiffs and the class they represent of property without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution, the Civil Rights Act of 1871 and the Housing and Urban Development Act of 1937 (as amend-

JURISDICTION AS TO HOUSING AUTHORITY OF THE CITY OF TULSA, TOM HARES, individually and in his capacity as Director of the Housing Authority of the City of Tulsa; FLOYD JOHNSON, individually, and in his capacity as manager of the Comanche Park Housing Project; DON BROOKS, individually and in his capacity as manager of the Riverview Housing Project.

42 U.S.C. §1983:

The Court does have jurisdiction under 42 U.S.C. §1983.

Escalera v. New York City Housing Authority, 425 F.2d 853 (2nd Cir. 1970), at page 864; 42 U.S.C. §1401; Housing Authority of City of Omaha v. United States Housing Authority, 468 F.2d 1 (8th Cir. 1972).

The Court, therefore, has jurisdiction under 42 U.S.C. §1983.

IT, IS, THEREFORE, ORDERED that the cause of action and complaint be and the same are hereby dismissed as against the defendant, Carla Hill.

IT IS FURTHER ORDERED that at the present time it appears that the Court has jurisdiction as to the remaining defendants.

IT IS FURTHER ORDERED that said defendants file a brief as to the question of propriety of class action within 45 days from this date.

ENTERED this 24th day of September, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SKYMART AVIATION, INC.,
a Montana Corporation,

Plaintiff,

vs.

No. 76-C-416-B

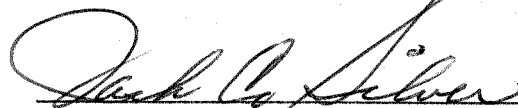
MID-STATES AIRCRAFT ENGINES,
INC., an Oklahoma Corporation, and
AIR-KARE CORPORATION, an
Oklahoma Corporation,

Defendants.

ENTRY OF DEFAULT JUDGMENT BY THE COURT CLERK
OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 23 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

The Court Clerk for the United States District Court for the Northern District of Oklahoma, having examined the Court file of the above styled and numbered cause and having received appropriate requests and affidavits and having determined that the defendants are in default, does hereby and pursuant to Rule 55(b) (1) F.R.C.P. enter judgment by default in favor of the plaintiff, Skymart Aviation, Inc., and against the defendants, Mid-States Aircraft Engines, Inc. and Air-Kare Corporation, in the amount of Twenty-Nine Thousand Nine Hundred and no/100 Dollars (\$29,900.00) together with the costs of this action.


Court Clerk for the United States
District Court for the Northern District
of Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

VERNARD LOWELL DAILEY,

Bankrupt,

KENNETH L. STAINER,
Trustee,

Plaintiff-Appellee,

vs.

GENERAL MOTORS ACCEPTANCE CORPORATION,

Defendant-Appellant.

76-C-186-B

FILED

SEP 23 1976

Jack L. Silver Clerk
U. S. DISTRICT COURT

JUDGMENT

Pursuant to the Order entered this date, Judgment is
entered in favor of Kenneth L. Stainer, Trustee, Plaintiff-Appellee,
and against General Motors Acceptance Corporation, Defendant-Appellant.

ENTERED this 23 day of September, 1976.

Allen E. Barrett

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

VERNARD LOWELL DAILEY,
Bankrupt,
KENNETH L. STAINER, Trustee,
Plaintiff-Appellee,
vs.
GENERAL MOTORS ACCEPTANCE CORPORATION,
Defendant-Appellant.

76-C-186-B

FILED

SEP 23 1976

ORDER

Jack G. Silver, Clerk
U. S. DISTRICT COURT

This matter comes on for consideration by the Court pursuant to an appeal filed by General Motors Acceptance Corporation, Defendant-Appellant herein, from the judgment of the Judge in Bankruptcy entered in the instant litigation on March 15, 1976.

The Judge in Bankruptcy concluded that the claim of General Motors Acceptance Corporation should be disallowed as a secured claim and allowed as a general, unsecured claim in the amount as filed; that the claimant/defendant, General Motors Acceptance Corporation had no right, title or interest in and to the 1975 2-Door Oldsmobile Automobile, Serial No. 3Z57W5M703270; and that the Trustee should be allowed to sell said motor vehicle at private or public sale as ordered by the Court, without further notice to General Motors Acceptance Corporation.

Pursuant to Rule 806 of the Rules of Bankruptcy Procedure, General Motors Acceptance Corporation has submitted the following statement of the issue appealed:

"Whether the Bankruptcy Judge erred in concluding that a financing statement filed in Oklahoma County for purposes of perfecting a security interest in equipment and lacking the signature of the debtor, but containing a reference to an original financing statement signed by the debtor and filed in Tulsa County did not constitute a financing statement under Oklahoma law and that the interest of the defendant in said automobile was subordinate to that of the Trustee's."

Rule 809 of the Rules of Bankruptcy Procedure provides:

"Unless otherwise provided by local rule or court order the parties shall be given an opportunity to be heard on oral argument."

Both parties have orally waived oral argument before the Court and have submitted the issue on briefs and the record on appeal.

Rule 810 of the Rules of Bankruptcy Procedure provides:

"Upon an appeal the district court may affirm, modify, or reverse a referee's judgment or order, or remand with instructions for further proceedings. The Court shall accept the referee's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the referee to judge of the credibility of the witnesses."

The parties filed a Stipulation of Facts, which was amended by an Addendum, and the facts stipulated to by the parties appear as follows:

1. Vernard Lowell Dailey did, on the 13th day of June, 1975, file his Petition for voluntary bankruptcy in the United States District Court for the Northern District of Oklahoma.
2. Vernard Lowell Dailey, the Bankrupt, had been a resident of Delaware County, State of Oklahoma, since the Month of July, 1974.
3. Vernard Lowell Dailey purchased a 1975 Oldsmobile, Serial No. 3257W5M703270 from Dean Bailey Olds, Tulsa, Oklahoma, on the 23rd day of October, 1974. That Vernard Lowell Dailey, as Buyer, and Dean Bailey Olds, as Seller, did execute an instrument dated October 23, 1974, entitled Retail Installment Contract, which listed the above-described motor vehicle. Said instrument was subsequently assigned by Dean Bailey Olds to Defendant, General Motors Acceptance Corporation.
4. That all instruments filed by General Motors Acceptance Corporation and Dean Bailey Olds with the intent to perfect a security interest in said above-described motor vehicle are attached to the Proof of Claim filed herein by General Motors Acceptance Corporation, and that the effectiveness of said instruments are the basis for the dispute in this matter.
5. The parties stipulate that the above-described motor vehicle was used for business purposes.

There is no dispute that the Bankrupt, Vernard Lowell Dailey was also known as Pat Dailey.

At the time of purchase of said vehicle, the Bankrupt executed a UCC Form 1, listing himself as debtor, Dean Bailey Olds as creditor, and the 1975 Oldsmobile as collateral. Said instrument

was assigned to GMAC and filed at 9:30 A.M. on October 30, 1974, with the Tulsa County Clerk.

On October 29, 1974, at 1:08 P.M., GMAC filed in Oklahoma County a UCC Form 1, listing Pat Dailey as debtor, itself as creditor, and describing the automobile. The form is signed by GMAC's agent and bears the notation "Original Filed in Tulsa County". The form is not signed by Pat Dailey. In the space provided for the debtor's signature appears the typed notation "S/S Pat Dailey".

The Judge in Bankruptcy concluded as follows:

1. Under stipulated facts the motor vehicle, as collateral, is to be classified as equipment and not as consumer goods (12A OS §9-109). To perfect the interest of defendant in this collateral it was necessary that a financing statement be filed in the office of the county clerk of Oklahoma County (12A OS §9-401(1)(c)).
2. The formal requisites of a financing statement are set out in §9-402(1) of Title 12A. One of the requisites is that the statement be signed by the debtor. Exceptions to the requirement of the debtor's signature are found in §9-401(2) (property brought into the State of Oklahoma), and in §9-401(3) (situations initially requiring county, or "local", filing followed by a change in the controlling county). Neither of these exceptions is applicable here under the facts requiring the Oklahoma County, or "central", filing in the first instance.
3. It will be concluded that the instrument which was filed in Oklahoma County did not constitute a financing statement under Oklahoma law; that the interest of the defendant was not perfected; and that the interest is subordinate, pursuant to §9-301 of Title 12A, to the rights of the trustee in bankruptcy - the plaintiff here.
4. Under §70c of the Bankruptcy Act the trustee, in confronting the interest of defendant, is accorded the rights of a hypothetical levying creditor without actual notice of such interest (Volume 4A, Collier on Bankruptcy, at p. 607 and following). No constructive notice was imparted either by the defective filing in Oklahoma County or by the inappropriate filing in Tulsa County which will be concluded to be a nullity regardless of the debtor's place of residence.

This Court notes the order attached to GMAC's brief arising from a case in this Court, but feels that the instant litigation is distinguishable from the question raised in that case.

This Court feels that the Judge in Bankruptcy has properly construed the applicable law in his conclusions of law and can find no fault therewith.

Starting from the basic inception of the documents confronted the Court, a UCC 1 form was filed in Tulsa County on October 30, 1974, at 9:20 A.M. This form was signed by the debtor, Pat Dailey.

On October 29, 1974, at 1:08 P.M. GMAC filed in Oklahoma County a UCC Form 1, listing Pat Dailey as debtor and itself as creditor. The form was not signed by the Debtor and reference was made to the Form previously filed in Tulsa County, although it was not filed until the day after.

Thus, this case is distinguishable from the case of Helm v. Hutchins v. GMAC, 75-C-519, United States District Court for the Northern District of Oklahoma. That case dealt with a photostatic copy (bearing a photostatic copy of the original and the signature thereon).

The Court, therefore, concludes that the instrument filed in Oklahoma County did not constitute a financing statement under Oklahoma law; that the interest of the defendant was not perfected; and that the interest is subordinate, pursuant to §9-301 of Title 12A, to the rights of the trustee in bankruptcy - the plaintiff herein.

IT, IS, THEREFORE, ORDERED that Judgment be entered for the plaintiff-trustee-Appellee, and against the Defendant-Appellant, General Motors Acceptance Corporation.

ENTERED this 23 day of September, 1976.

Allen E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION

WILLIAM HAMILTON; WILLIAM DUKE,
JR.; ALVAN N. JOHNSON; EDWARD E.
BROWN; ALEX G. BERRY; HARRY DORSEY;
STERLING M. SCOTT; C. G. MILLER;
NATHANIEL W. ANDERSON; LARUE A.
THOMPSON; JOHN FOOTE; WILLIE
JEFFERSON; JESSEE JAMES JONES;
CORNELIUS GRUBBS; CARL R. SCOTT;
and COMMITTEE ON EQUAL EMPLOYMENT
PRACTICES,

Plaintiffs,

-vs-

VICKERS TULSA DIVISION OF SPERRY
RAND,

Defendant,

and

LOCAL LODGE 790 OF THE
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO and INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO,

Defendants.

FILED
IN OPEN COURT

SEP 23 1976

JACK C. SILVER, CLERK
U. S. DISTRICT COURT

CIVIL ACTION

NO. 74-C-606

SUPPLEMENTAL CONSENT DECREE
WITH UNION DEFENDANTS

The plaintiffs, having filed their original and first Amended Complaint in this action, and the defendants having filed their Answers, and it appearing to the Court that the parties have waived a hearing and the entry of Findings of Facts and Conclusions of Law, and the parties have agreed to the entry by this Court of the following DECREE, without admission by any of the defendants of a violation of 42 U.S.C. §2000e, or of any other Federal, State or Local law or Executive Order, and without a finding by the Court of whether

the defendants intentionally or knowingly discriminated against any person or persons because of race or color in violation of 42 U.S.C. §2000e, or of any other Federal, State or Local law or Executive Order; now, therefore, the Court enters the following ORDER AND DECREE:

I.

PARTIES

A. The plaintiffs in this action are Willaim Hamilton, William Duke, Jr., Alvan N. Johnson, Edward E. Brown, Alex G. Berry, Harry Dorsey, Sterling M. Scott, C. G. Miller, Nathaniel W. Anderson, LaRue A. Thompson, John Foote, Willie Jefferson, Jessee James Jones, Cornelius Grubbs, Carl R. Scott, and Committee on Equal Employment Practices, who either are members of a class of black persons, or who represent such persons, who are either presently employed, will become employed, are retired or have voluntarily quit their employment between January 1, 1972 and the date of this decree, whose employer was, is, or will be Sperry Vickers Tulsa and whose representative for the purposes of collective bargaining was, is, or will be the International Association of Machinists and Aerospace Workers, AFL-CIO, and its Local Lodge 790;

B. The defendants in this action are Sperry Vickers Tulsa (Inaccurately named in the caption as "Vickers Tulsa Division of Sperry Rand"), hereinafter referred to as the "Company" and the International Association of Machinists and Aerospace Workers, AFL-CIO, and its Local Lodge 790, hereinafter referred to jointly as the "Unions" and severally as the "Local Union" and the "International Union".

C. The plaintiffs are adequate representatives of the class above described, which class is so numerous as to make joinder impracticable. There are questions of law and fact common to the class, and the claims and defenses of the class. For the purposes of this Class Determination, the defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate the issuance of final injunctive relief with respect to the class as a whole. This action is therefore found to be properly maintainable under Rule 23 (b)(2) of the Federal Rules of Civil Procedure.

D. The plaintiffs are all black persons who are citizens of the United States and of the State of Oklahoma. The plaintiffs have standing to sue the defendant Unions under 42 U.S.C. § 1981, and have met all the jurisdictional prerequisites to the maintenance of this action.

E. The defendant Unions are labor organizations within the meaning of 42 U.S.C. § 2000e.

F. This DECREE is binding on the plaintiffs and their class, their successors, heirs, assigns and other legal representatives. This DECREE is also binding on the Unions, their officers, agents, employees, successors, members, and all persons in active concert or participation with said Unions. The Court has made no finding of a violation of any kind, but in deciding to approve this CONSENT DECREE, the Court commends the Unions and the Plaintiffs for their effective affirmative proposals herein.

II.

NON-ADMISSION PROVISION

By entering into this DECREE, the Unions do not admit to, nor has the Court made, any determination that there is or has been violation of any law, rule or regulation. No findings of any kind have been issued by the Court substantiating any of the allegations made by the plaintiffs. The Court does accept the terms of the Consent Decree as follows:

III.

GENERAL PROVISIONS

IT IS HEREBY ORDERED that the defendant Unions will not discriminate against Company employees who are Affected Class Members or applicants for membership, by engaging in any act which has either the purpose or effect of:

1. Causing or attempting to cause the Company to discriminate against any individual because of such person's race or color.
2. Failing and refusing to fairly represent in negotiations and contract administration all employees of the Company for which the Unions are bargaining agents without regard to such person's race or color.
3. Failing or refusing to admit, or excluding or expelling from membership, or otherwise discriminating against any employee of the Company because of such person's race or color.
4. Limiting, segregating or classifying any of their members because of such person's race or color.

5. Discouraging complaints or grievances by class members who seek to avail themselves of their rights herein, or retaliating against any class member because of their having filed charges or having participated in this lawsuit in any way.

IV.

SENIORITY

A. The Company and the Unions have agreed to adopt a system of plantwide seniority in accordance with the revised seniority article of the collective bargaining agreement, (Appendix A attached).

B. All layoffs occurring after the effective date of this Decree shall be governed by the revised plantwide seniority article. All recalls of persons presently on layoff shall be governed by the revised plantwide seniority: Provided, that in no event shall the Company be required to disrupt its present workforce by laying off workers who would not be qualified to remain in the active work force under the revised seniority article and replacing those persons with laid off workers who would be entitled to remain in the active work force under the revised seniority article; and this revised seniority article shall be given prospective effect only.

C. Pending final approval of this Consent Decree, the seniority article (Appendix A herein) as approved by the Court on June 14, 1976 shall govern.

V.

QUALIFICATIONS AND PROMOTIONS

A. The Company and the Unions have established a job

posting procedure to fill all openings above Janitor classification as outlined in Article 16.6 of the revised seniority article of the Collective Bargaining Agreement (Appendix A attached).

B. Any affected class member who desires to dispute any action taken hereunder may do so through the established grievance procedure.

VI.

UNION'S CONSENT

The Unions specifically consent to the DECREE and commit to effectively assist the Company wherever possible to achieve its obligations under its Consent Decree approved by the Court on June 14, 1976. The Court further approves the dismissal by the Company of its Counterclaim against the Union defendants, as consideration for the agreement by the Union defendants to the terms of these Decrees.

VII.

MONETARY RELIEF

A. The plaintiffs and Union defendants having stipulated, and the Court having so found, that any alleged discriminatory practices by the Union defendants in any event had ceased by January 1, 1973, the Court hereby finds that the only class members who are entitled to monetary relief are those class members whom the plaintiffs allege to be suffering the present effects of any past discriminatory practices.

B. In full settlement of any and all claims which have been or could have been made in this action by any of the

named plaintiffs or any member of the class defined herein against the Union defendants there shall be paid over to the counsel for plaintiffs the sums set forth in Sealed Appendix B. for distribution in accordance with the provisions set forth in such sealed appendix. It is further ordered that the contents or provisions of such Sealed Appendix shall not be made public by any person, nor shall the sums paid thereunder be disclosed by the parties hereto.

C. The Court further finds, as stipulated by the Plaintiffs and the Union defendants, that all class members other than those enumerated in Sealed Appendix B, are entitled only to the benefits of this Decree relating to non-monetary relief.

VIII.

NOTICE

A. The entry of this Order constitutes approval by the Court of the terms of settlement as required by Rule 23 (e) of the Federal Rules of Civil Procedure.

B. With respect to all issues which concern class members raised in the Complaint in this action, this Order is a final adjudication on the merits.

IX.

TERM OF DECREE

This CONSENT DECREE shall remain in effect until January 1, 1978, and the Court shall retain jurisdiction for the purposes of effectuating this Decree during the above-specified time period.

18/ H. Dale Cook
UNITED STATES DISTRICT JUDGE

CONSENTED TO:

18/ Donald E. Kammer
ATTORNEY FOR PLAINTIFF

18/ Mary L. Mathies
ATTORNEY FOR DEFENDANT COMPANY

18/ Hays Foster
ATTORNEY FOR DEFENDANT UNIONS

APPENDIX A

Revised Article 16 - Seniority

(16.1) The seniority of an employee is that time spent by an employee in the employ of the Company from the date of their last official hiring into the employ of the Company, and unless otherwise specifically so stated, shall in this Agreement be understood to refer to plant seniority.

(16.2) The seniority of employees upon completion of the probationary period is determined as follows:

- A. Any newly hired employee employed for less than thirty-one (31) calendar days is considered a probationary employee and his/her employment status during such probationary period shall be considered temporary. The service of such probationary employees, at any time during the probationary period, may be terminated at the sole discretion of the Company. He/she shall have no seniority during that period nor be entitled to any of the other privileges available to employees upon completion of their probation, the employee's name will be placed on the seniority list as of his/her first day worked.
- B. In the event of reclassification, an employee shall be on trial for forty-five (45) calendar days in the new classification.
- C. In the event that an employee fails to

perform to the Company's satisfaction during the course of his/her trial period in the new classification, the Company reserves the right to return such employee to his/her former classification.

(16.3) When it becomes necessary to reduce personnel, employees with the least amount of plant seniority in the affected classification shall be laid off first. A minimum of forty-eight (48) hours notice shall be given to an employee who is to be laid off. Upon receiving notice that he/she is to be laid off, the employee may:

- A. Accept a voluntary layoff; or,
- B. Accept any lower-rated classification in his/her job family (as outlined in Appendix "C" of the Collective Bargaining Agreement, attached) to which his/her seniority entitles him/her; or,
- C. Claim any lower-rated classification in any other job family, provided the employee has satisfactorily completed a trial period in that classification, or he/she may claim a lower classification in that job family.
- D. Employees who do not claim any classification, according to the above, or who cannot retain a classification in any job family, will be placed in the highest pool classification which they have sufficient seniority to retain.
- E. Subject to the provision of Sections 16.7 and 16.7A of this Article, employees so exercising their seniority shall be assigned to the department and classification of the

employee they are displacing and shall receive their current rate from the classification from which they are removed or the current top rate of the classification to which they are downgraded, whichever is less. When an employee exercises his/her seniority for preference of shift when downgrading, Section 16.7B of this Article will not apply.

- F. Employees who accept downgrading and remain in the employ of the Company shall be defined as "inactive" with respect to the classification from which they were removed.
- G. Employees separated from the employ of the Company as the result of a reduction in force are defined as "laid-off" employees.
- H. A laid-off or downgraded employee is subject to recall in seniority order to fill vacancies in the classification in which he/she is "inactive" or to lower classifications in the job family.
- I. A laid-off employee having completed his/her probationary period will remain on the recall list for twenty-four (24) calendar months.

(16.4) Time lost as a result of authorized leave of absence or layoff shall be considered as time served. An employee promoted to a job outside the bargaining unit will retain and shall continue to accumulate his/her bargaining unit seniority for a period of eighteen (18) months from the date

of such promotion. If such employee is returned to the bargaining unit within such eighteen (18) month period, he/she shall be placed in the highest paid classification in which he/she has satisfactorily completed a trial period and in which his/her bargaining unit seniority entitles him/her to displace at that time. The bargaining unit seniority of any employee not returned to the bargaining unit within such eighteen (18) month period shall be cancelled.

(16.5) All seniority and recall rights shall be forfeited by:

- A. Voluntary quitting.
- B. Discharge for cause.
- C. Twenty-four (24) consecutive months of layoff or authorized leave of absence (except as provided in Paragraph 16.4), unless the leave of absence is granted an employee as a result of an industrial injury sustained in his/her employment with the Company, or if the employee accepts a full time position as a Union official.
- D. Failure to report within five (5) calendar days of the sending of a registered letter or telegram to the employee's recorded address offering him/her rehire.
- E. Exception may be made to the provision of Section 16.5D above in the event such employee presents to the Company within ten (10) days of the sending of such recall notice a valid reason, acceptable to the Company for his/her failure to report. In such case, he/she will await recall to the next available opening.

- F. When an employee is automatically retired upon reaching age 65.
- G. If the employee is absent three (3) consecutive regular work days without an approved leave of absence. If an employee is given an approved leave of absence by phone, a written leave shall be sent by mail and a copy given to the Plant Committeeman.
- H. An employee on disability leave who qualifies and receives disability benefits from Social Security will be processed as a termination.

(16.6) When the Company determines that there is a vacancy to which no laid-off or downgraded employee is inactive, advancements of employees from lower classifications shall be made in accordance with the procedure herein outlined, before the employment of new employees.

- A. The Company will post a notice on the bulletin board designated for job postings, describing the necessary qualifications, the wage rate, and the shift. This notice shall be posted for a minimum of three (3) working days. Interested applicants for the posted vacancy shall indicate their desire for reclassification to the vacancy by signing the posting. This posting procedure will not be used for the purpose of downgrading. Any employee who is scheduled for vacation may indicate a desire in writing to the Personnel Office to be considered for any specified job vacancies which occur while he/she is on vacation: Provided, that the employee shall be obligated to fill such

vacancy upon return, if selected.

- B. Selection for promotion to the posted vacancy shall be made among those applicants on the basis of uniformly applied, non-discriminatory criteria as to the applicant's qualifications to do the job. In the event that more than one applicant is qualified, the employee with the greatest plantwide seniority will be given preference, subject to 16.6C (below).
- C. If the vacancy occurs in a job grouping (as outlined in Appendix D of the Collective Bargaining Agreement attached) that has fewer than 10% minority representation then the following procedure will apply:
1. If the most senior qualified employee who signs the posting is an Affected Class member, that employee will be advanced or reclassified in accordance with the preceding provisions.
 2. If the most senior employee who signs the posting is a non-affected class member and there are qualified Affected Class members requesting to fill the vacancy, and there are fewer than 10% Affected Class member employees in the job grouping, then the most senior qualified Affected Class member who signs the posting will be reclassified at a ratio of not less than one (1) for every four (4) vacancies.
- D. An applicant who disagrees with the deter-

mination made by the Company as provided in this Section may appeal the determination through the Grievance Procedure.

- E. Posted vacancies may be filled by the Company on a temporary basis while the job posting procedure is in progress.
- F. The Company shall be under no obligation to consider any employee for advancement until such time as the employee has completed ninety (90) consecutive calendar days in his current classification.

(16.7) Employees shall have preference of shifts in their classification in accordance with their plantwide seniority subject to the following provisions:

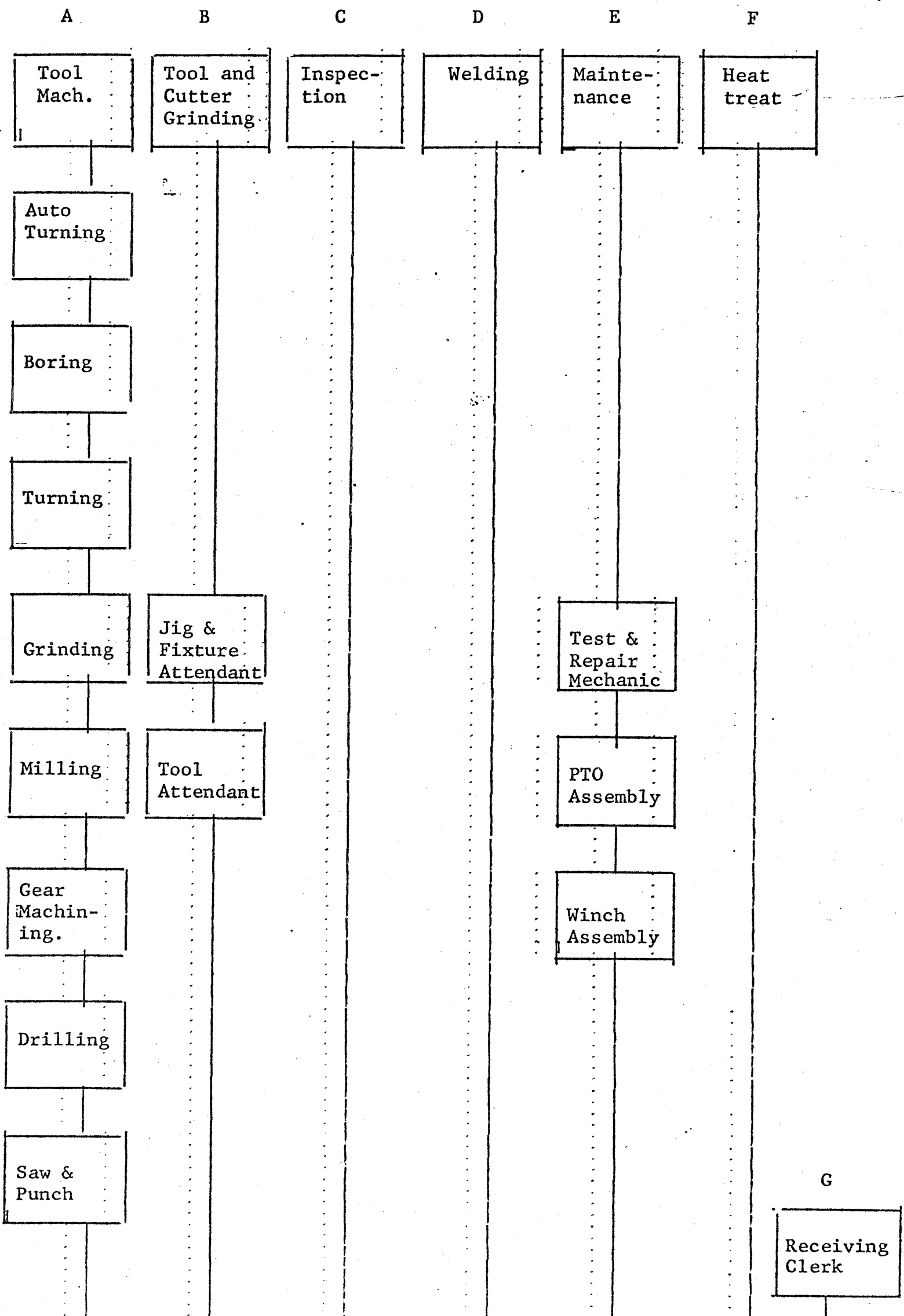
- A. The Company shall have the right to grant or withhold such preference in order to attain the necessary distribution of skilled and experienced employees required on the shifts for a period necessary to train a shorter service employee, not to exceed the probationary period or trial period, whichever is applicable.
- B. No employee shall exercise such preference of shifts more than once in any twelve (12) month period.
- C. The assignment of employees to jobs within a classification including overtime assignments shall be based on the skill and ability of the employee and the Company's requirements. Such assignments are not subject to the seniority provisions of this Agreement.

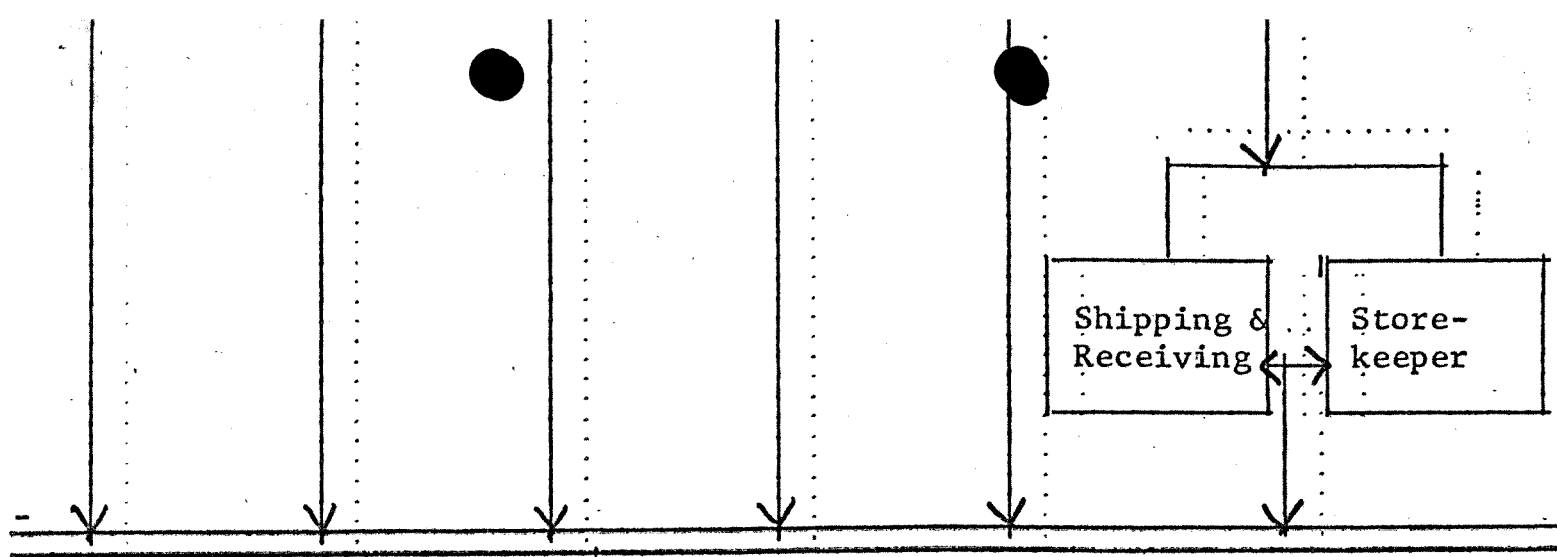
(16.8) Employees may be temporarily transferred to perform work outside of their classification, it being understood that such loans shall not exceed ten (10) working days (20 days for vacation relief) at any one time except by mutual agreement of the employee and the Company. When such loan extends one (1) regularly scheduled work week and the employee involved is not receiving a rate equal to or above the minimum rate of the classification to which he/she is on loan, his/her rate shall be adjusted to such minimum for the remainder of the loan period.

(16.9) When the Company schedules an inventory period, there may be a complete or partial cessation of production and maintenance activities. There shall be no exercise of displacement rights in this event, and no notice of layoff shall be required. Among those who have not been disqualified on the basis of previous inventory experience with the Company, senior employees will be given preference. Seniority shall not govern the order of selecting which employees are sent home as the inventory progresses except that within specific inventory teams seniority will be observed.

APPENDIX "C"

JOB FAMILIES





POOL CLASSIFICATIONS

APPENDIX OF
THE COLLECTIVE
BARGAINING AGREEMENT

JOB GROUPINGS

GROUP 1

Tool Machining
Maintenance
Welding
Inspection

GROUP 2

Auto Turning

GROUP 3

Heat Treat
Tool and Cutter Grinding
Boring
Turning

GROUP 4

Grinding and Milling

SEALED APPENDIX B

For the consideration expressed in the Consent Decree entered by the United States District Court for the Northern District of Oklahoma in Civil Action No. 74-C-606, and in accordance with Article VII of such Decree, the undersigned parties hereby agree to the provisions set forth below, for the purpose of fully and finally resolving all issues which were raised or could have been raised in the above-styled action:

1) Upon entrance by the Court of a Final Order approving the aforesaid Consent Decree, the Union shall pay the sum of Two Thousand Dollars (\$2,000.00) to the order of Philip E. Kaplan, as attorney at law and in fact for all of the named Plaintiffs and members of the class in said civil action number 74-C-606, which sum shall be distributed between such Plaintiffs and their class as were entitled to monetary relief under Sealed Appendix B of the Consent Decree with the Company, and between such attorneys, as they mutually agree, which amount shall be in full, final and complete satisfaction of any and all claims which such attorneys for Plaintiffs may have against any or all of the Defendants for any costs, expenses, or fees incurred by such attorneys for Plaintiffs in connection with or arising out of the issues which are the subject of the aforesaid Decree.

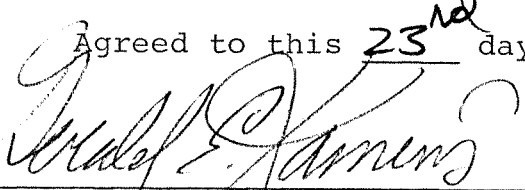
2) The payment of the aforescribed sums by the Union to Philip E. Kaplan shall constitute a full and complete release by the Plaintiffs and the class which they represent and by their attorneys of any and all claims which such persons may have against the Defendant Unions and each of them, and such Plaintiffs and the class which they represent, together

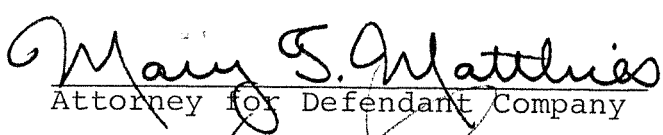
with their attorneys, covenant to save and hold harmless the Defendant Unions from any disputes which may arise as to the distribution of the aforescribed sums.

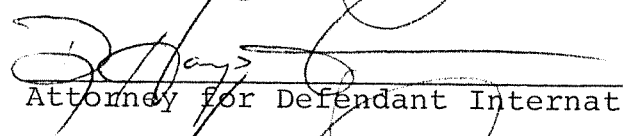
3) In consideration for the promises by the Defendant Unions to pay the sums set forth in clause 1, above, each of the persons found to be entitled to the receipt of monetary relief under Article VII of the Consent Decree and Sealed Appendix B of the Consent Decree with the Company shall execute a Release and Settlement of Claim, acceptable to said Unions, and shall furnish a copy of same to each of the Defendant Unions. Failure of any of such persons to execute such Releases within ten (10) days of the entrance of a Final Order of the Court approving this Decree shall result in a forfeiture of such person(s) to entitlement to any monetary relief under such Decree.

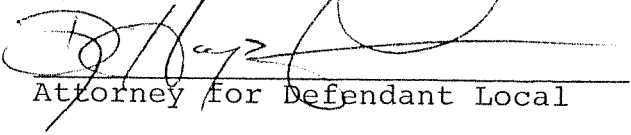
4) It is further understood and agreed that the agreement by the Defendant Unions, and each of them, to the entrance of such Decree, or the payment of any sums hereunder shall not constitute an admission by any or all of the Defendant Unions of any violation of any of the rights of the Plaintiffs or the class which they represent.

Agreed to this 23rd day of September, 1976.


Attorney for Plaintiffs


Attorney for Defendant Company


Attorney for Defendant International


Attorney for Defendant Local

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MICHAEL G. BUTLER,

Plaintiff,

vs.

EQUIFAX, INC., formerly
RETAIL CREDIT CO., INC.,
a foreign corporation,

Defendant.

No. 76-C-86-C

FILED

SEP 23 1976

J U D G M E N T

Jack C. Silver, Clerk
U. S. DISTRICT COURT

This action came on for trial before the Court on
September 20 and 21, 1976, and the Court having heard the
evidence, and having in open court on September 21, 1976,
made and entered its Findings of Fact and Conclusions of
Law, and having found the issues for the defendant and
against the plaintiff,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff
take nothing, that this action be and the same hereby is
dismissed on the merits, with prejudice, and that the
defendant recover of the plaintiff its costs of action.

Dated this 23rd day of September, 1976.

/s/ H. Dale Cook
H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 25 1976

VERA JUANITA REED,
Plaintiff,

vs.

PAY 'N' PAK STORES, INC.,
Defendant.

No. 76-C-100

Jack C. Silver, Clerk
U. S. DISTRICT COURT

APPLICATION TO DISMISS

Come now the parties hereto and move the Court to
dismiss the above captioned cause on the grounds and for the
reason that the parties have compromised their differences and
nothing further remains to be litigated.

Vera Juanita Reed
VERA JUANITA REED

Jack C. Silver
ATTORNEY FOR PLAINTIFF

Joseph M. Best
ATTORNEY FOR DEFENDANT

ORDER OF DISMISSAL

Now on this 20th day of September, 1976, upon the
parties Application To Dismiss this cause, the Court being
fully advised in the premises, finds that nothing further
remains to be litigated and the above captioned cause is herewith
dismissed with prejudice.

W. A. Lebock
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE SEP 20 1976
NORTHERN DISTRICT OF OKLAHOMA

RICHARD F. GASKILL,
Plaintiff,

vs.

CASPAR WEINBERGER
SECRETARY OF HEALTH, EDUCATION
AND WELFARE,

Defendant.

75-C-391-B ✓

JUDGMENT

Based on the Memorandum Opinion entered this date,
IT IS ORDERED that Judgment be entered in favor of the de-
fendant and against the plaintiff.

ENTERED this 2nd day of September, 1976.

Allen E. Sarow

CHIEF UNITED STATES DISTRICT JUDGE

FILED

SEP 22 1976

ph

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

RICHARD F. GASKILL,

Plaintiff,

vs.

CASPAR WEINBERGER
SECRETARY OF HEALTH, EDUCATION
AND WELFARE,

Defendant.

75-C-391-B

MEMORANDUM OPINION

This matter comes on for consideration by the Court, having been submitted for decision upon the filing of simultaneous briefs.

This action was instituted by plaintiff pursuant to §205(g) of the Social Security Act, as amended (42 U.S.C. §405(g)), for judicial review of a final decision of the Secretary of Health, Education and Welfare.

The record and transcript on file herein reflect that plaintiff filed an application for a period of disability and for disability benefits on February 25, 1974. It is plaintiff's contention that he has been unable to work since August 16, 1973. On March 20, 1974, the Bureau of Disability Insurance, Division of Initial Claims, Department of Health, Education and Welfare, denied plaintiff's claim.

A hearing was had before and Administrative Law Judge on October 1, 1974, and plaintiff was represented by counsel at said hearing. The Administrative Law Judge filed his decision December 27, 1974. On May 16, 1975, the Appeal Counsel of the Department of Health, Education and Welfare, approved the Decision of the Administrative Law Judge.

The Law and Regulations considered by the Administrative Law Judge and this Court are found in Section 216(i); Section 223; Section 223 (d)(1); Section 223(d)(2)(A); Section 223(d)(3) of the Social Security Act and Section 404.1524(c) of the Regulation No.

4.

The Administrative Law Judge, in his decision, in a hearing de novo, delineated and evaluated the evidence before him at the hearing.

The transcript reveals that plaintiff was born March 14th, 1929, and was 45 years of age at the time of the hearing. (TR-33). He is married and has one step-child and one natural child, both of whom do not reside in the home. (TR-34).

He has a high school education. (TR-35) He was in the service 4 years, 1 month, 8 days, 3 hours, and 52 minutes (TR-35), and was considered an aircraft inspector. He attempted to study pre-law in a correspondence course while he was in the service and working for Phillips. He has a varied work background , i.e. custodian in a grocery store; local distributing agent for a newspaper; operator of an auto salvage business; foreman for a nursery; vacuum cleaner salesman; service station operator; relief gager for a pipeline company and roustabout. He was a research technician with the Phillips Petroleum Company for 18 years.

In his claim for disability, plaintiff claims he is disabled due to a back injury.

The records reveal that in January of 1974, plaintiff was treated at the Veterans Administration Hospital in Muskogee, Oklahoma, and hospitalized, for a treatment of injuries due to an alleged fall off a 30 gallon trash drum. The diagnosis at that time was lumbar muscular spasm (TR-127). He was released to return to his normal activities. In February of 1974, plaintiff was again hospitalized at the Veterans Hospital for headaches in the occipital region accompanied by blurring of vision and occasional nausea. The headaches were alluded to as being due to muscular spasm or anxiety. The report shows that plaintiff responded well to Valium and was discharged after 8 days of hospitalization. Shortly after this admission, plaintiff was an out patient at a neuropsychiatric clinic at the Muskogee VAH in a despondent state for which the diagnosis was despondency (hypochondria) and schizoid personality and he was referred to the Vetrans Administration Hospital at Little Rock,

Arkansas, for further neuropsychiatric evaluation. Plaintiff was rehospitalized from March 25, 1974, to April 5, 1974 at the VA Hospital in Muskogee for headaches, blurring of vision, occasional vomiting and anxiety. The medical history relating to the March admission referred to plaintiff's previous two-week stay at the Little Rock Psychiatric Division in February of 1974. It is also noted that he was discharged at his own request because of reported lack of psychiatric treatment. During the March hospitalization, the records reflect that plaintiff's emotional condition fluctuated up and down and included a period of paranoia and loss of memory. Plaintiff was given a psychiatric appointment for April 19, 1974, and discharged. The hospital records reflect there was little objective evidence to support plaintiff's subjective complaints other than minimal evidence of mild scoliosis by x-ray. The final diagnosis was anxiety neurosis; arthralgia; absence of teeth. The out-patient records reflect that plaintiff was seen periodically from April 19, 1974 to May 24, 1974 at the Muskogee VHA for psychiatric and denture care. The May 24, 1974, records reflect that plaintiff was rejected from several jobs because of his history of psychiatric care.

The records reflect that plaintiff was hospitalized at the VAH in Little Rock from February 28, 1974, to March 21, 1974, for depression stemming from the use of excessive amounts of Valium. As a result of this hospitalization, plaintiff was diagnosed on admission as drug dependent-Valium; adjustment reaction to adult life; and refraction error.

Dr. R. J. Wolf, an osteopathic physician, examined plaintiff on June 5, 1974, and indicated that his examination revealed no limitations of musculoskeletal function, but did indicate plaintiff had pain in spine, knees and hips with work tolerance limited to sedentary work.

At the request of the Oklahoma State Agency, an evaluation was performed by Dr. J. Peter Beck, an orthopedist, and he reported moderate bilateral paraspinal muscle spasm with approximately 50 percent of the lumbar lordosis present. On spinal range of motion studies forward flexion was positive at 80 percent and right and left lateral

bending including extension were also positive at 80 percent. Plaintiff's motor function was strong and equal in the upper and lower extremities. Dr. Beck's neurological exam indicated deep tendon reflexes, knee and ankle jerks were 2+ and equal bilaterally. Dr. Beck performed other examinations and tests and found that plaintiff's subjective complaints were not consistent with the physical or x-ray findings and that from an orthopedic standpoint he should be able to do some type of productive work.

From August 14, 1974, to August 16, 1974, plaintiff was again hospitalized at the VA Hospital in Little Rock with the complaint that he was unable to walk at times. He was in a wheel chair but physical, neurological and psychiatric examinations showed normal findings. The diagnosis was hysterical neurosis, conversion type. Plaintiff was not considered psychotic.

The record reveals that the family income consists of \$82 worth of food stamps and the local masonic lodge pays the utilities on the home.

The Court finds that its role is limited on judicial review and is not a trial de novo and if there is substantial evidence to support the fact findings or decision of the Secretary, the Secretary should be affirmed. It is not the duty of the Court to reweigh the evidence or substitute the judgment of the Court for that of the Secretary.

If the Secretary's Findings are supported by substantial evidence, they are conclusive and must be affirmed. *Richardson v. Perales*, 402 U.S. 389 (1971).

The Court notes that attached to the Brief of the plaintiff submitted in this cause is a Report of Robert C. Edwards, P.H.D., dated August 12, 1975. This report was not before the Secretary or the Administrative Law Judge, and, thus, cannot be considered by this Court in the instant litigation.

As stated in the brief submitted by the defendant, the mere presence of a disease or an impairment is not disabling per se and the plaintiff must show that he is so functionally impaired that he is precluded from engaging in substantial activity.

The Court finds that the findings and determination of the Administrative Law Judge and the Secretary are not clearly erroneous and are substantially supported by the evidence and should not be disturbed in this litigation.

IT IS, THEREFORE, ORDERED that the Findings of the Secretary and the Administrative Law Judge are supported by substantial evidence and are conclusive and must be affirmed.

A Judgment in favor of the defendant and against the plaintiff will be entered this date.

ENTERED this 22nd day of September, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LEONARD McFARLAND,

Plaintiff,

vs.

BAKERY AND CONFECTIONERY
WORKERS LOCAL UNION NO. 65,

Defendant.

No. 75-C-452-C

SEP 23 1976

Jack G. Cherry, Clerk
U. S. DISTRICT COURT

J U D G M E N T

Plaintiff, Leonard McFarland, brings this action alleging that the defendant Bakery and Confectionery Workers' Local Union 65 (hereinafter "Union") discriminated against him in failing to process a labor grievance because of his race. Plaintiff alleges that the failure of defendant "Union" to properly represent him because of his race in refusing to process a grievance against his employer, ITT Continental Baking Company, Inc. pursuant to Title 29 U.S.C. § 141 et seq. violates his civil rights protected by Title 42 U.S.C. § 2000e-2(c)(1) and Title 42 U.S.C. § 1981.

By agreement of the parties the case has been submitted to the Court on the record now before the Court for determination on the question of liability. Both the plaintiff and the defendant have been given ample opportunity to submit briefs and evidence in support of their contentions as they relate to the question of liability. As agreed to by the parties, the case is now ready for a determination on the merits.

The following facts as stated in the Pre-trial Order are undisputed:

1. This cause arises out of an alleged act of racial discrimination in employment under Title 42 U.S.C. § 2000e et seq.

2. Jurisdiction is premised on Title 28 U.S.C. § 1337; Title 28 U.S.C. § 1343; Title 29 U.S.C. § 141 et seq. and Title 42 U.S.C. § 1981.

3. Plaintiff is Black and of the Negro race.

4. Plaintiff has exhausted his administrative remedies.

5. Defendant is the duly recognized collective bargaining agent for the plaintiff and has been such at all times material to this case.

6. The employer, ITT Continental Baking Company, Inc., was and is engaged in commerce as defined by the above cited statutes.

7. Plaintiff was hired by the employer, ITT Continental Baking Company, Inc., some time prior to October 16, 1974. On or about October 16, 1974, plaintiff was discharged due to alleged excessive absenteeism by said employer. Plaintiff requested that defendant "Union" file a grievance against the employer for said discharge. On October 18, 1974, defendant's business agent made an appeal to company officials and on October 22, 1974, a grievance was filed. On November 7, 1974, business agent B. M. Johnson on behalf of the defendant "Union" submitted a written request to the employer, ITT Continental Baking Company, Inc., for arbitration of the matter. (Defendant's Exhibit # 14).

8. Business agent B. M. Johnson is Black and of the Negro race.

From the exhibits and depositions submitted as evidence by the parties and made a part of the record, and after perusing the entire record, the Court finds the following:

1. At all times material to this case the defendant, "Union", was a party to a Collective Bargaining Agreement with ITT Continental Baking Company, Inc. (Joint Exhibit # 1).

2. Plaintiff, McFarland was a member of the bargaining unit established by said Collective Bargaining Agreement.

3. On January 11, 1974, plaintiff received a verbal reprimand concerning his attendance record from the Employer's (ITT Continental Baking Company, Inc.) Production Superintendent, Walt Roberts (Hervey Dep., p. 28).

4. On August 19, 1974 plaintiff received a written reprimand concerning his attendance record from Production Superintendent Roberts. (Defendant's Exhibit # 5).

5. On August 26, 1974, plaintiff received a letter from the Employer's (ITT Continental Baking Company, Inc.) Personnel Directory, Wilson Hervey, advising him of the number of days during which plaintiff had been late to or absent from work during the year

- 1974, and requesting that plaintiff improve his absent record. (Defendant's Exhibit # 6).
6. On October 2, 1974, plaintiff was advised by letter from Production Superintendent Roberts that he had been given a three day disciplinary suspension due to his failure to improve his attendance record. (Defendant's Exhibit # 7).
7. Plaintiff was discharged by his employer ITT Continental Baking Company, Inc. on October 16, 1974, for excessive absenteeism. (Defendant's Exhibit # 8).
8. Defendant "Union" received copies of each of the warnings submitted by ITT Continental Baking Company, Inc. to plaintiff. These letters of warning were held by defendant "Union" in plaintiff's employment file. (Johnson Dep. p. 17-20).
9. On October 18, 1974 a verbal grievance concerning plaintiff's discharge was filed by defendant, "Union". (Johnson Dep. p. 14). On October 21, 1974, a written grievance concerning plaintiff's discharge was filed by defendant "Union". (Defendant's Exhibit # 11).
10. Randy Willis, a white employee, was also discharged by the Employer on October 16, 1974 for excessive absenteeism. (Johnson Dep. p. 23; Hervey Dep. p. 26).
11. On October 18, 1974, the Business Representative of defendant "Union", Billy Mac Johnson, informed ITT Continental Baking Company, Inc., in writing of the Union's intention to pursue the terminations of the plaintiff and former employee Willis through the contractual grievance procedure. (Defendant's Exhibit # 10).
12. On October 22, 1974 plaintiff's formal grievance was denied by ITT Continental Baking Company, Inc. (Defendant's Exhibit # 11; Johnson Dep. p. 26-27).
13. After a request by Johnson for reconsideration of the terminations of plaintiff and Willis, ITT Continental Baking Company, Inc. reaffirmed the terminations. (Defendant's Exhibit # 13; Johnson Dep. p. 28-29).
14. By letter dated November 7, 1974, the defendant "Union" acting through Business Representative Johnson, requested that plaintiff's discharge and that of former employee Willis, be submitted to arbitration in accordance with the procedure established by the Collective Bargaining Agreement. (Defendant's Exhibit # 14).
15. The defendant "Union" compiled the available and relevant documents in preparation for prosecuting the grievances of plaintiff and Willis. (Johnson Dep. pp. 33-36, 53-55, 62).
16. Defendant "Union" sought an independent evaluation of the merits of the grievances. In an opinion letter dated November 15, 1974 counsel for defendant "Union", Mr. John M. Keefer, advised defendant that plaintiff's chances of reinstatement without back pay were remote. (Defendant's Exhibit # 17). Such evidence aids in establishing that defendant acted in good faith.

17. After consideration of plaintiff's grievance by the defendant "Union's" Executive Committee pursuant to Section 7f of "Union's" By-Laws, (Joint Exhibit # 3) the defendant determined that the grievance lacked merit and determined not to submit the grievance to arbitration. (Defendant's Exhibit # 18 & 20; Johnson Dep. pp. 46-51).
18. The Oklahoma Human Rights Commission and the Equal Employment Opportunity Commission each considered plaintiff's charge of racial discrimination and found no reasonable cause to believe that the charge was true. (Exhibit A Attached to Complaint).
19. John E. Barger, a former employee of ITT Continental Baking Company, Inc. was terminated solely because of his failure to meet the Employer's physical standards. (Defendant's Exhibit # 2; Hervey Dep. pp. 21-23).
20. Defendant "Union" acted in good faith and in a non arbitrary manner in refusing to arbitrate plaintiff's grievance.
21. Under the evidence presented in this case plaintiff has failed to show that the defendant "Union" acted arbitrarily, discriminatorily, or in bad faith in refusing to arbitrate plaintiff's discharge by ITT Continental Baking Company, Inc. due to absenteeism.

CONCLUSIONS OF LAW


1. This Court has jurisdiction over this case under Title 28 U.S.C. § 1337, as arising under an Act of Congress regulating commerce, under Title 28 U.S.C. § 1343 granting jurisdiction in civil rights matters and under Title 42 U.S.C. § 2000e-5(f)(3) pertaining to equal employment opportunity.
2. Plaintiff has exhausted his administrative remedies.
3. "In administering the grievance and arbitration machinery as statutory agent of the employees. a union must, in good faith and in a nonarbitrary manner, make decisions as to the merits of particular grievances." Vaca v. Sipes, 386 U.S. 171, 194, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967).
4. Absent a provision to the contrary in the Collective Bargaining Agreement an individual employee has no absolute right to have his grievance arbitrated. Vaca, 386 U.S. at 195.
5. A breach of the duty of fair representation is not established merely by proof that the underlying grievance was meritorious. Vaca, 386 U.S. 195.
6. A union's duty of fair representation of its members may be satisfied by good faith investigation of merits of a grievance without further processing of an unmeritorious claim, and the union has a broad degree of discretion in processing individual grievances. Local Union No. 12, United Rubber, C.L.&P. Wkrs. v. N.L.R.B., 368 F.2d 12 (5th Cir. 1966).
7. "Under the doctrine the union's statutory authority as the exclusive agent to represent all members of a designated unit includes the duty to serve the interests of all without hostility or

discrimination and to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. Vaca, supra, at 177, 87 S.Ct. 903; Humphrey v. Moore, 375 U.S. 335, 342, 84 S.Ct. 363, 11 L.Ed.2d 370. And these duties include processing grievances in good faith under the collective bargaining agreement. Humphrey v. Moore, supra at 343, 84 S.Ct. 363." Woods v. North Am. Rockwell Corp., 480 F.2d 644, 648 (10th Cir. 1973).

8. "However the claim of breach of duty of fair representation must be measured by the standards whether the union's action was arbitrary, discriminatory or in bad faith, Vaca, supra, 386 U.S. at 190, 87 S.Ct. 903; Patterson v. Tulsa Local No. 513, 446 F.2d 205, 210 (10th Cir.), cert. denied, 405 U.S. 976, 92 S.Ct. 1202, 31 L.Ed.2d 251, and whether there is fraud, deceit, dishonest conduct, or discrimination that is intentional, severe, and unrelated to legitimate union activities. Motor Coach Employees v. Lockridge, 403 U.S. 274, 299, 301, 91 S.Ct. 1909, 29 L.Ed.2d 473; Reid v. International Union, 479 F.2d 517 (10th Cir., 1973)." Woods v. North Am. Rockwell Corp. 480 F.2d 644, 648 (10th Cir. 1973).

9. The Court may consider the findings and conclusions of the Oklahoma Human Rights Commission and the Equal Employment Opportunity Commission. Smith v. Universal Service, 454 F.2d 154 (5th Cir. 1972).

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that judgment be entered in favor of the defendant, Bakery and Confectionery Workers Local Union No. 65, and against the plaintiff, Leonard McFarland, on plaintiff's Complaint and Amended Complaint this 22nd day of September, 1976.


H. DALE COOK
United States District Judge

Allen E. Barnett
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DYER CONSTRUCTION COMPANY, an
Oklahoma corporation,

Petitioner,

vs

FORT SMITH STRUCTURAL STEEL COMPANY,
an Arkansas Corporation, and
CONTINENTAL NATIONAL AMERICAN (CNA),
an Illinois Corporation,

Respondents.

NO. 76-C-224-C ✓

FILED

SEP 2 1976 *pm*

J. G. GIBSON, CLERK
U. S. DISTRICT COURT

ORDER OF DISMISSAL WITHOUT PREJUDICE

This cause comes on for pre-trial hearing on the 27th day of August, 1976, at which time, in open court, counsel for Respondents stated that said Respondents have agreed and do agree to indemnify Petitioner in the event a final judgment is entered against it by reason of an accident involving Edward Richard Eberle, which accident was the subject of a lawsuit being cause #C-71-75, Creek County, Oklahoma. Upon the statement by Respondents' counsel in open Court, the parties agree there is no issue existing between them upon which to base a cause of action for declaratory judgment and the Court, upon statement of Respondents' counsel and the motion of the parties, finds that said cause should be dismissed without prejudice.

BE IT, THEREFORE, ORDERED, ADJUDGED AND DECREED that petitioner's action for declaratory judgment should be and the same is dismissed without prejudice for the reason that no issue exists upon which to sustain the action.

J. G. Gibson
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILLIS F. ROHMAN,

Plaintiff,

vs.

McDONNELL DOUGLAS CORPORATION,

Defendant.

75-C-119-B

FILED

SEP 24 1976 *rm*

ORDER

Jack C. Silver, Clerk
U. S. DISTRICT COURT

The Court has for consideration the Motion to Dismiss filed by the defendant, the briefs in support and opposition thereto, and, being fully advised in the premises, finds:

Plaintiff commenced the instant litigation on March 5, 1975, in the District Court of Tulsa County, Oklahoma.

Thereafter, the defendant properly removed the case to this Court on the basis of diversity of citizenship and the amount in controversy.

On January 7, 1976, the plaintiff filed an amended complaint. The gravament of the complaint in this controversy is alleged by the plaintiff to be a breach of contract to furnish him with a safe place to work and safe office equipment.

Plaintiff is an employee of the United States Government and not an employee of the defendant. Plaintiff, alleges as the basis of his contract action, that the defendant was engaged in a defense contract with the United States Government, as as a condition of obtaining the contract, the defendant did agree to and did furnish office space and furniture to certain government employees. Plaintiff alleges that the defendant, both impliedly and expressly, agreed to furnish a safe place to work.

Plaintiff further alleges that on November 9, 1972, while sitting in an office desk chair furnished him by the defendant, he fell to the cement floor as a result of a broken chair leg, and that he was injured. Plaintiff alleges severe injuries to his spine. He claims damages as follows:

Pain and suffering, physical and mental, past present and future	\$104,545.50
Medical expense incurred	\$ 9,000.00
Future medical expense	\$ 10,000.00
Lost wages (excess of)	\$ 15,000.00
Curtailment of earning a living in future; shortening of working life	<u>\$115,000.00</u>
PRAYER FOR JUDGMENT	\$253,545.50

In its Motion to Dismiss, the defendant contends that the two year statute of limitations (Title 12 O.S. §95) bars plaintiff's cause of action, arguing that the cause of action is ex delicto and not ex contractu.

McConnell v. Oklahoma Gas and Electric Company, 530 P.2d 127 (Ok1. 1974) involved an action by dog owners against the electric company to recover damages for the death of a dog which escaped from their yard through a gate allegedly left unlatched by the electric company's employee and was struck by an automobile. The defendant, in that case, demurred to the portion of the petition seeking punitive or exemplary damages for the reason that "*** The alleged acts of defendant and defendant's employee *** arose out of plaintiff's contract with defendant for electric service, and therefore exemplary damages may not be recovered under the provisions of Title 23 O.S.1971 §9." The Oklahoma Supreme Court said:

"However, the mere fact that contractual relations were involved does not necessarily mean that plaintiffs are precluded from bringing an action in tort. In Jackson v. Central Torpedo Co., 117 Okl. 245, 246 P. 426, 46 A.L.R. 338, this Court held:

"Where the transaction complained of had its origin in a contract which places the parties in such a relation that in attempting to perform the promised service the tort was committed then the breach of contract is not the gravamen of the action. The contract in such case is mere inducement, creating the state of things which furnishes the occasion for the tort, and in all such cases the remedy is an action 'ex delicto' and not an action 'ex contractu.'"

"To the same general effect see *Morriss v. Barton*, 200 Okl. 4, 190 P.2d 451; *Hall Jones Oil Corp. v. Claro*, Okl., 459 P.2d 858; and *Fort Smith and W. R. Co. v. Ford*, 34 Okl. 575, 126 P. 745. In the case now before us, the alleged contract for electric service was 'mere inducement, creating the state of things which furnishes the occasion for the tort', and plaintiff's proper remedy was an action in tort.***."

The case of *Mullendore v. Sohio Petroleum Company*, 438 F.2d 1099 (10th Cir. 1971) was a case that grew out of this Court's decision to sustain a Motion to Dismiss, that was affirmed on appeal. The Circuit Court said:

"The motion to dismiss came on for hearing, and the trial judge dismissed the action. His order doing so found that the action sounded in tort, not contract, ***."

"Plaintiffs' contract theory is predicated upon those sections of the lease that relate to damages for use of the surface and to the duty of the lessee to carry on operations in a workmanlike manner, commit no waste and allow no waste to be committed upon the land, and permit no nuisance to be maintained upon the land."

"Essentially their claim is that, as third party beneficiaries under the lease, they are entitled to sue either in tort or in contract. Inasmuch as the lease and the law imposed upon the defendants a duty to carry on their activities in a safe and non-hazardous manner, it is claimed, their conduct constituted both a breach of contract and a tort. Cited in support of this position are *Hall Jones Oil Corp. v. Claro*, 459 P.2d 858 (Okl. 1969); *In Re Talbott's Estate*, 184 Kan. 501, 337 P.2d 986 (1959); *Chicago R.I. & P.Ry. Co. v. Harrington*, 44 Okl. 41, 143 P. 325 (1914); *Hobbs v. Smith*, 27 Okl. 830, 115 P. 347 (1911). Hence the assertion is made, the five year statute of limitations, 12 Okl.St. Ann. §95 (First), should apply."

"In support of their contention that the action can be considered only as a tort action, the appellees rely on *Morriss v. Barton*, 200 Okl. 4, 190 P.2d 451 (1948); *Independent Torpedo Co. v. Carder*, 165 Okl. 87, 25 P.2d 62 (1933); *Jackson v. Central Torpedo Co.*, 117 Okl. 245, 246 P. 426 (1926). In these cases, the Oklahoma Supreme Court held that, where a contract is the mere inducement creating the state of things that furnishes the occasion for a tort, the tort, not the contract, is the basis of the action. Also propounded therein is the

proposition that, if a duty to take due care arises from a relation of the parties irrespective of a contract, the action is one of tort.

"Particular reliance is placed upon Jackson v. Central Torpedo Co., supra, in which the transaction which was the subject matter of the action originated in a contract which placed the parties in such a relation that the defendant, in attemptint to perform, committed a tort. The court not only found the action to be exclusively a tort aciton, but also applied the two-year statute of limitations contended for by the present appellees."

The trial court was affirmed.

The Court has noted the cases cited by both parties to this action and has determined that the present action sounds in tort rather than in contract.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss filed by the defendant be and the same is hereby sustained and this cause of action and complaint are hereby dismissed, as being barred by the two year limitation applicable to a tort action in Oklahoma (Title 23 O.S.1971 §9).

ENTERED this 21st day of September, 1976.



CHIEF UNITED STATES DISTRICT JUDGE